

1975 WL 29392 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 14, 1975

**\*1 Re: Sections 505.1(c) and 505.1(d) of the Children and Family Services Manual**

Mrs. Linda Liverman  
Chief  
Children & Family Services Division  
State Department of Social Services  
P. O. Box 1520  
Columbia, South Carolina 29202

Dear Mrs. Liverman:

You have requested the assistance of this office in resolving certain questions with reference to Sections 505.1(c) and 505.1(d) of the Children and Family Services Manual. The questions presented were as follows:

1. Section 505.1(c) When a biological mother marries the biological father after the child is born, does the marriage indeed legitimize the child, and is the biological father's consent to the adoption required; or if the mother releases the child for adoption to the Department of Social Services, prior to her marriage to the biological father, may we accept consent of the mother alone?
2. Section 505.1(d) Since a step-father is not legally responsible for the financial support of a step-child, would it not be inconsistent to hold him responsible for legal relinquishment for adoption. In other words, does a step-father have any legal responsibility for a step-child in regard to financial support and/or relinquishment for adoption?

According to Section 20-5.1, Code of Laws of South Carolina, 1962, as amended, the marriage of the biological mother to the biological father after the child is born does indeed legitimize the previously born illegitimate child, with such a union thereby requiring the consent of the biological father to any subsequent adoption of the legitimized child. In other words, the act of legitimization by the biological parents would place any subsequent adoption within the ambit of Section 10-2587.7(a), Code of Laws of South Carolina, 1962, as amended, which requires the written consent of both parents, if living, before a valid adoption may be decreed. However, if the biological mother releases the child for adoption prior to her marriage to the biological father, such consent is proper and may be accepted pursuant to Section 10-2587.7(b), Code of Laws of South Carolina, 1962, as amended.

Please note that in the above-mentioned situations, certain case decisions may be apposite. [Campbell v. Christian, 235 SC 102, 110 SE 2d 1 \(1959\)](#) holds that a common law marriage is a proper act of legitimization. Also, it is conceivable that the case of [Stanley v. Illinois, 405 US 645, 31 L Ed 2d 551, 92 S Ct 1208 \(1972\)](#), which holds that an unwed father has a right to notice and an opportunity to be heard before custody of his child is removed, may have applicability in some instances.

The role of a step-father and his legal responsibility regarding the financial support and/or relinquishment for adoption of his step-child is governed by the case of [Chestnut v. Chestnut, 247 SC 332, 147 SE 2d 269 \(1966\)](#). In this case, the South Carolina Supreme Court distinguished 'adoption' and standing 'in loco parentis', the former being permanent, while the latter is temporary and terminable at will. Following the reasoning of the Court it would appear that although a step-father is not legally responsible for the financial support of his step-child, if the step-father has voluntarily assumed such

a responsibility he is therefore deemed a necessary 'parent' from whom consent must be obtained before a valid decree of adoption may be effectuated. In all other cases the step-father should be given notice of the proceedings, so as not to leave open any avenue for a subsequent challenge to the adoption decree.

\*2 If this office can be of any further assistance please contact us. Also, I should like very much a copy of the Children and Family Services Manual.

Respectfully yours,

Lincoln C. Jenkins, III  
Staff Attorney

1975 WL 29392 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.