

Official Opinion No. 83-39, Payment of Attorney's Fees For Counsel Appointed Pursuant To SDCL 26-8-22.2

November 1, 1983

Mr. Roger Tellinghuisen  
Lawrence County State's Attorney  
Lawrence County Courthouse  
Deadwood, South Dakota 57732

Official Opinion No. 83-39

**Payment of Attorney's Fees For Counsel Appointed Pursuant To SDCL 26-8-22.2**

Dear Mr. Tellinghuisen:

You have requested an official opinion based upon the following question:

QUESTION:

May the county, which pays the expense for counsel appointed for a minor pursuant to SDCL 26-8-22.2, look to the parents of such minor for reimbursement?

SDCL 25-7-7 provides for the parent's duty to support his minor children. This statute is based on the common law. Under the common law, a parent's duty to support his minor child arises out of the parentage itself. It is an implied promise of the marriage contract. It is a duty which is imposed upon the parent for having brought the child into the world. Barrett v. Barrett, 44 Ariz. 509, 39 P.2d 621 (1934).

The state has a peculiar interest, as *parens patriae*, in the support of children domiciled within its borders. Yarborough v. Yarborough, 290 U.S. 202, 54 S.Ct. 181, 78 L.Ed. 269 (1933). \_Because the state has an interest in preventing children from becoming a public burden, the parent's duty to support his child is also a duty to the public. State ex rel. Stearns County v. Klasen, 123 Minn. 382, 143 N.W. 984 (1913). Although the state has made various provisions for the maintenance of children, the support obligation is imposed primarily upon the parent. Yarborough v. Yarborough, *supra*.

The parent's duty to support his children is a broad duty, not limited to those bare necessities required to sustain life. State v. Waller, 90 Kan. 829, 136 P. 215 (1913). The

word 'necessity' is to be taken in a liberal sense \_and includes social and moral protection. Streitwolf v. Streitwolf, 58 N.J. Eq. 570, 43 A. 904 (1899). This includes attorney's fees. Noyes v. Jack, 443 S.W.2d 89 (Tex. Civ. App. 1969). Griston v. Stousland, 186 Misc. 201, 60 N.Y.S.2d 118 (1946).

Therefore the answer to your question is YES.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General