

CRIMES AND PUNISHMENT: Child abandonment means that necessities of life are not provided for child.

12-27  
December 22, 1933.



Hon. John A. Eversole  
Prosecuting Attorney  
Washington County  
Potosi, Missouri

Dear Mr. Eversole:

This is to acknowledge your letter which reads as follows:

"I have been urged to prosecute a case against a young father for his failure to support his minor child. The parents were divorced and the mother given the care and custody of the child which is three years of age. The father was adjudged by the court to pay for the support of said child the sum of ten dollars per month. He could do this if he wanted to I think but seemingly hasn't wanted to. At least he hasn't done so.

The mother and child are living with her parents and the child's grandfather is of course keeping them supplied with all necessities of life. The grandfather and mother however want me to prosecute the husband for his failure to pay for the support of said child as adjudged by the court.

I have looked up the law quite carefully I believe. The leading case seems to be State vs. Thornton reported in 232 Missouri at page 306L. C. which holds that if some one else is furnishing the necessary support for the child the father cannot be convicted.

Several later cases have been decided and all seem to follow this case, however the grandfather is not entirely satisfied with my opinion that under the circumstances he cannot make a case out of this. For that reason I would very much appreciate your opinion as to whether I am right or not.

It is our opinion that your opinion concerning the above matter is correct. The case you referred to, State v. Thornton, 232 No. 298, l. c. 305 and 306, holds:

"The statute penalizes the refusal of the father to supply necessary food, etc. Under the law pertaining to necessaries, a necessary article is one which the party actually needs. It is not enough to show that the article is per se classed as necessary, such as food and clothing. It must also be actually needed at the time."

And further,

"The Legislature did not enact this law for the purpose of punishing parents for failure to do their duty as such. Such a purpose would smack too strongly of paternal government. The only legitimate object of the statute is to secure to infants, who are in future to become citizens of the State, proper care; such care as is necessary to protect their lives and health. In other words, to prevent destitution.

It follows from the foregoing that if infant children are receiving necessary food, clothing and lodging from any source, there is no occasion for the State to interfere by penal law or otherwise."

The facts in this case are similar to those you stated. This case has never been overruled by the Supreme Court although it was sought to be distinguished in State v. Beims, 212 No. App.

231 (St. Louis Court of Appeals). However, in *State v. Winterbauer*, 318 Mo. 693, the Supreme Court of Missouri again affirmed the *Thornton* case, *supra*, and quoted therefrom, having this to say in regard to *State v. Beims* (l. c. 696):

"The Springfield Court of Appeals in its opinion adopted the construction given the statute in the *Thornton* case, holding that as it appeared the child was provided with necessary food, clothing and lodging by its grandfather, the conviction could not be sustained and it accordingly reversed the judgment and discharged the defendant.

In *State v. Beims*, 212 Mo. App. 231, 253 S. W. 420, the St. Louis Court of Appeals said:

' . . . and the mere fact alone that the child was being supported and cared for by friends, relatives, or by charitable institutions, would not excuse any man or woman from discharging the duty imposed upon them by law.'

We think this ruling is opposed to the opinion in the *Thornton* case."

The above case is the last expression of the Supreme Court that we are able to find.

Section 4026 R. S. Mo., 1929, provides in part pertinent as follows:

"\* \* \* \* or if any man or woman shall, without good cause, abandon or desert or shall, without good cause, fail, neglect or refuse to provide the necessary food, clothing or lodging for his or her child or children born in or out of wedlock, under the age of

sixteen years etc., he or she shall upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. Etc."

As stated above, we concur in your interpretation and opinion of the law as applied to the facts in your case.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JLH:EG