

January 4, 1963



Honorable William W. Hoertel
Prosecuting Attorney
Phelps County
Rolla, Missouri

Dear Mr. Hoertel:

This is in response to your request for an opinion from
this office dated December 19, 1962, as follows:

"This is a formal request for an opinion
concerning Section 454.120 R. S. Mo.,
1959, said statute states as follows:
'The Prosecuting Attorney upon the request
of the Court or of State Division of
Welfare shall represent the plaintiff in
any proceedings under Section 454.010 to
454.360.'

"My question, therefore, is whether or
not this situation precludes a private
attorney at law from representing a
plaintiff in a Reciprocal Non-Support
action, and if so, whether or not I, as
Prosecuting Attorney, can force any
prospective plaintiff to get the Court
to request me to file a petition in Court
for the said prospective plaintiff."

As a matter of general information, I am taking the
liberty of enclosing herewith a prior opinion of this office
dated September 10, 1962, to the Honorable Fred Steck,
Prosecuting Attorney, Scott County, wherein you will note
we advised that where the Prosecuting Attorney is requested
by either the court or the State Division of Welfare to
represent the plaintiff in proceedings under Chapter 454,
RSMo 1959, he has the mandatory duty to do so.

Honorable William W. Hoertel

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Further, in the same opinion we observed that the prosecuting attorney can in his discretion initiate a proceeding on his own initiative without awaiting an order of court or of the State Division of Welfare.

In reading the statutes, we find nothing which would preclude a plaintiff from hiring her own counsel to pursue her cause of action.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

HLM:BJ