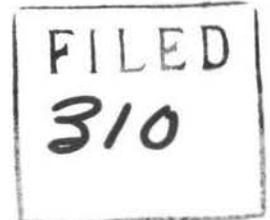


APPROPRIATIONS: Payments for children who have been
ADOPTED CHILDREN: adopted and for whom foster care pay-
FOSTER HOME CARE: ments have been paid under the homeless,
DIVISION OF WELFARE: dependent, and neglected foster care
program of the state of Missouri cannot
be made from the funds appropriated for payment of the state's
share of the cost of family foster home care of homeless, depen-
dent or neglected children.

OPINION NO. 310

December 14, 1973

Mr Bert Shulimson, Director
Missouri Division of Welfare
Broadway State Office Building
Jefferson City, Missouri 65101



Dear Mr. Shulimson:

This opinion is issued in response to your request for an official Attorney General's opinion regarding a particular provision of House Bill No. 254, 77th General Assembly. Your question reads as follows:

"In regard to House Bill 254, 77th General Assembly, repealing and re-enacting Section 453.070, RS Mo 1969, relating to adoptions.

- (1) Our question resolves itself around the legality of making the payments as required in House Bill 254, to subsidize the family of an adopted child as provided by said bill, in light of the following factors:
 - (a) The funds for foster home care for homeless, dependent, or neglected children are provided in two specific line items, in House Committee Substitute for House Bill 6 of the 77th General Assembly, Sections 6.350 and 6.360, pages 9 and 10 of said bill.
 - (b) By this bill, does not the subsidized foster child lose

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the status of a foster child and therefore become ineligible for payments from this specific line item fund? If the foster child does lose the status of a foster child, would it not be an illegal payment, under Article 4, Section 28, Constitution of Missouri, 1945."

House Committee Substitute for House Bill No. 6, 77th General Assembly, provides there is appropriated out of the state treasury, chargeable to the funds for the agency and purpose designated, for the period beginning July 1, 1973, and ending June 30, 1974, as follows:

"Section 6.350. To the Division of Welfare

To reimburse counties of the first class, certain counties of the second class and the City of St. Louis the State's share of the cost of family foster home care to homeless, dependent, or neglected children as provided by law

From General Revenue \$946,000

"Section 6.360. To the Division of Welfare

To reimburse counties of the second, third and fourth class the State's share of the cost of family foster home care to homeless, dependent, or neglected children as provided by law

From General Revenue \$856,300"

House Bill No. 254, 77th General Assembly, repealed Section 453.070, RSMo 1969, and enacted two new sections in lieu thereof to be known as Sections 453.070 and 453.085 relating to adoption of minor children. Section 453.070, subdivision 1, provides in part that no decree for adoption of a minor child shall be entered until a full investigation has been made of the physical and mental condition of such child for the purpose of ascertaining whether the child is suitable for adoption.

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Section 453.085(1) defines and describes various forms of allotments and subsidies and their purposes. Section 453.085(2) provides:

"2. The juvenile court is authorized to subsidize the family of an adopted child in one of the aforementioned forms of allotment. The subsidy shall not exceed the expenses of foster care and medical care for foster children paid under the homeless, dependent and neglected foster care program of the division of welfare, of the department of public health and welfare of the state of Missouri. The subsidy shall be paid only for the same children for whom foster care payments have been paid under the homeless, dependent and neglected foster care program of the division of welfare of the department of public health and welfare of the state of Missouri and the subsidy shall be paid in the same manner and from the same funds as foster care payments. This authorization shall pertain to those children previously considered unadoptable; those suffering from physical handicaps or mental retardation or those children belonging to minority racial and ethnic groups for whom adoptive homes are not readily available." (Emphasis added)

Your question asks whether a child adopted under the provisions of Section 453.085 loses its status as a foster child, and if so, whether a payment to the family of such adopted child from the appropriation of HCSHB No. 6 would violate Article IV, Section 28, Constitution of Missouri.

Article IV, Section 28, Constitution of Missouri, provides in pertinent part, as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for that payment of money be incurred unless the commissioner of administration certifies it for payment and certifies that the expenditure is within the purpose as directed by the general assembly of the appropriation . . ."

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Under the above-constitutional provision, then, no money shall be withdrawn from the state treasury unless the expenditure is within the purpose of a specific appropriation act.

Article IV, Section 23, Constitution of Missouri provides, in pertinent part, as follows:

" . . . Every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose."

Sections 6.350 and 6.360 of HCSHB No. 6 provide for an appropriation to reimburse counties for the state's share of the cost of family foster home care to homeless, dependent or neglected children as provided by law.

Although the term "family foster care" is not defined in Section 453.070 as reenacted, an analysis of Sections 207.020 and 210.292 indicates that as the term is used in the statutes it means care for homeless, dependent, and neglected children whose custody is in the Division of Welfare.

Section 207.020, defining the powers, duties, and functions vested in the Division of Welfare, authorizes it to accept for social services and care ". . . homeless, dependent or neglected children in second, third and fourth class counties whose legal custody is vested in the division of welfare by the juvenile court; . . ." and further provides that the cost shall be paid jointly by the county and the Division of Welfare.

Family foster home care in class one counties, the City of St. Louis, and Clay County is provided for in Sections 210.292 to 210.298, RSMo 1969. Section 210.292(2) provides as follows:

"2. The 'family foster home care' provided for by sections 210.292 to 210.298 shall be home care of homeless, dependent and neglected children when the family foster homes are selected by the local agency or division of welfare and the placement of children therein is lawfully authorized; the 'care' shall include room, board, clothing, medical care, dental care and incidentals."

Clearly, once a child has been adopted it is no longer "homeless, dependent or neglected." Nor does his legal custody remain vested in the Division of Welfare. In addition, the language of

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Section 453.085, particularly paragraph 2, indicates a legislative recognition of a distinction between family foster home care and care by the family of a newly adopted child. Indeed, if such a distinction did not exist, there would have been little need to have repealed and reenacted Section 453.070.

In any event, in construing statutes, words are to be given their plain or ordinary or usual meaning. State v. Brady, 472 S.W.2d 356 (Mo. 1971). And it is obvious that the plain or ordinary meaning of the term "foster home care" does not include adoptive home care.

Furthermore, it is a well-accepted rule of statutory construction that appropriation acts are to be strictly constructed. Meyers v. Kansas City, 18 S.W.2d 900 (Mo. banc 1929); State v. Weatherby, 168 S.W.2d 1048 (Mo. banc 1943).

Consequently, it is clear that payments to the families of adoptive children are not within the purview of Sections 6.350 and 6.360, which earmark moneys specifically for "family foster home care to homeless, dependent or neglected children"

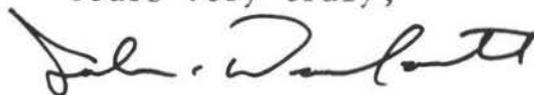
Therefore payments for adopted children under Section 453.085(2) cannot be made from moneys appropriated by Sections 6.350 and 6.360 of House Bill No. 6 because such payments are prohibited by the Missouri Constitution.

CONCLUSION

It is the opinion of this office that payments for children who have been adopted and for whom foster care payments have been paid under the homeless, dependent, and neglected foster care program of the state of Missouri cannot be made from the funds appropriated for payment of the state's share of the cost of family foster home care of homeless, dependent or neglected children.

The foregoing opinion, which I hereby certify, was prepared by my assistant, Philip M. Koppe.

Yours very truly,



JOHN C. DANFORTH
Attorney General