

PLACEMENT OF
CHILDREN:

Any unlicensed person who assists in placing a child
in any home or institution is in violation of the law.



May 29, 1956

Honorable Proctor N. Carter
Director of Welfare
State Department of Public
Health and Welfare
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"During the past ten years there has been a great increase in the demand for children for adoption. As a result the demand has far exceeded the number of babies available. It has been estimated that there are ten requests to one placement that is made by licensed child placing agencies. A wide variety of factors have contributed to this large growth in adoptions. First in order of importance is the increasing popular acceptance in recent years of the whole concept of adoption. Also, prejudice against the child born out of wedlock, who account for more than half of the children involved in adoptions by non-relatives, has been largely dispelled. Moreover, there has been a substantial increase in illegitimate births. Another factor not to be overlooked in the growth of adoptions is the increase in the number of homes broken by death, divorce and desertion.

"The placing of a child for adoption is a serious matter, and requires the safeguards of a skilled investigation by trained personnel as adoption determines the entire future of a child since it severs his ties with his natural parents and relatives permanently and transplants him into a new family where he will remain until he is grown. There he will receive the care and treatment which will determine the kind of adult which he will become. To natural parents, adoption usually means relinquishing the child forever without the privilege of seeing him or even knowing his whereabouts. To the adoptive parents, it means undertaking the care of a child who will become a permanent member of their family and to whom they will have the

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same obligations as a child born to them.

"It has been reported that in some instances doctors, lawyers, nurses and other persons not licensed under the provisions of Section 210.201, Laws of Mo. 1955, as a child placing agency, have acted as intermediaries in finding children for adoption or making placements. The intermediary often defends his practice on the grounds he is acting for the mother; that he is protecting the child, the mother, and the adoptive parents; that his activities are on a non-commercial basis; and he is a benefactor and has a humanitarian interest in helping the natural mother out of an embarrassing situation. In other instances we have been informed that the nonlicensed person was unaware that there was any legal requirements or restrictions under which child placements could be made in this State.

"Child placing agencies exist to find the best opportunities for a child; not necessarily to find children for adults. If there are ten applications from people who want to adopt a child, there certainly ought to be one family that perhaps is a little better suited to care for a child than the nine others.

"In the interest of protecting children who cannot have the benefit of a normal home with natural parents, we would appreciate receiving an opinion from you as to whether there is a violation of the law when placements are made by non-authorized persons, including doctors, lawyers and nurses, and also whether the Juvenile Court, in its discretion would be authorized to dismiss an adoption petition, when upon inquiry, it was determined that the original placement was made by a person or persons unlicensed and unauthorized by statute to participate in the placement of the child, and to make an order regarding the future custody of the child if the person having possession of the child had secured possession from or through a non-authorized person, and had not complied with the provisions of Section 453.110, R.S.Mo. 1949."

Your first question is in regard to the placement of children by unlicensed persons.

Paragraph 3 of Section 210.201, MoRS Cum. Supp. 1955, reads:

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"(3) 'Child placing agency' means and includes any person who advertises or holds himself out as placing or finding homes for children or as otherwise disposing of children, or who actually places, or assists in placing, one or more children in homes of other persons or in institutions, or who causes, or assists in causing, the adoption or change in possession or custody of one or more children, for compensation or otherwise; * * *."

It will be noted that this paragraph, which defines the term "child-placing agency", gives three definitions of the term, one of which is a person "who actually places, or assists in placing, one or more children in homes of other persons or in institutions."

Section 210.211, RSMo Cum. Supp. 1955, reads in part:

"License required - exceptions.-- It shall be unlawful for any person to establish, maintain or operate a boarding home for children, a day care home or day nursery for children, or a child placing agency as defined in sections 210.201 to 210.245, or to advertise or hold himself out as being able to perform any of the services as defined in section 210.201, without having in full force and effect a written license therefor granted by the division of welfare, provided that nothing in sections 210.201 to 210.245 shall apply to: * * *"

It seems obvious that the answer to your first question, therefore, is that any unlicensed person, which of course would include a doctor, lawyer, or nurse, who assists in placing even one child in a home or institution, is in violation of this law and is subject to prosecution under Section 210.245 RSMo Cum. Supp. 1955, since such person is a "child-placing agency", within the meaning of paragraph 3 of Section 210.201, supra. In regard to this matter, we direct your attention to the case of Goodman v. District of Columbia, 50 Atl. Rep. (2d) 812. At l.c. 813, the opinion in that case reads in part:

"The Act under which appellant was prosecuted was passed early in 1944 and was the culmination of many years of struggle on the part of social agencies and others to put an end to the unregulated transfer, placing and brokerage of babies and the social evils which resulted therefrom. Until that time this was one of the very few jurisdictions in which there was no control over such activities.

"The Act is comprehensive in nature and expresses the purpose of Congress to secure for children under sixteen who are placed in family homes other than their own or those of relatives, the best care and guidance, so as to serve the welfare of such children and the best interests of the community. To accomplish that purpose Congress prohibited the operation of any child-placing agency by anyone not specifically licensed for that purpose by the Commissioners. It authorized the Board of Public Welfare to investigate applicants for licenses and if found to meet certain requirements set out in the statute, to recommend them to the Commissioners. To prevent 'careless placement of babies for adoption, without adequate consideration of the interests of the parents, the children, and the adopting parents,' Congress wrote into the Act this provision:

"'Any person, firm, corporation, association, or public agency that receives or accepts a child under sixteen years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency.' Code 1940, § 32--782.
and followed it with this later provision:

"'No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for adoption.' Code 1940, § 32--785."

At l.c. 814, the opinion reads:

"If appellant were proceeding on the assumption that he, as a lawyer, had a right to place the child for adoption, though he was unlicensed for that purpose, he was mistaken. We look in vain for any token of intention within the statute that the placing of babies by lawyers should be in any different or forgiven status than such placing by citizens in any other class. No court has said that such statutes do not apply to lawyers. No scrutiny of the sections involved can yield up such an exemption by mere process of judicial construction. If it could,

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the courts might just as properly create a whole series of exemptions; and before long the process of erosion by judicial construction would be complete and the Act ineffective.

"We are told that if defendant is not absolved, no lawyer can feel safe when he is called on to advise or act in an adoption case. Even if that were so we could not help it; we would have to apply the statute as it is written. But we think the careful lawyer will have little trouble in determining what he may lawfully do in such situations. We think even a cursory reading of the statute will tell him how far he may go and where he must stop."

In regard to your second question, we believe that the juvenile court has complete authority in the matter and may grant or deny an adoption petition upon whatever ground it sees fit, and that it is not answerable as to the ground it chooses, or the weight it may give to any particular fact or factor in the situation.

We wish to state that we are not passing upon the constitutionality of the law here involved, but are assuming its constitutionality.

CONCLUSION

It is the opinion of this department that any unlicensed person who assists in placing a child in any home or institution is in violation of the law; and that a juvenile court has complete discretion in rejecting an adoption petition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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