

DIVISION OF WELFARE:
LICENSING MASONIC
HOME OF MISSOURI:
CHILDREN:

There is no duty or responsibility of the State Division of Welfare to require a license nor to inspect that portion of the Masonic Home of Missouri devoted to the caring for children, because the Home neither advertises nor holds itself out as conducting a boarding house or place of residence for children.



June 21, 1957

Honorable Proctor N. Carter, Director
Division of Welfare
State Office Building
Jefferson City, Missouri

Dear Mr. Carter:

In your letter of the twentieth of March, 1957, you wrote us as follows:

"A question has arisen as to the duty or responsibility of the State Division of Welfare to license and inspect that portion of the Masonic Home in St. Louis, City, Missouri, that is devoted to caring for children under the provisions of Chapter 210, Laws of Missouri 1955.

"It is my understanding that approximately thirty children are cared for in the Masonic Home in St. Louis who are unattended by parent or legally appointed guardian.

"We would appreciate receiving an opinion from you as to whether or not that portion of the Masonic Home devoted to the care of children should be licensed as a boarding home for children under the provisions of Chapter 210, supra."

You will recall that on the twenty-second of March we wrote you that we were going to meet with the Board at the Masonic Home and get the facts regarding the Home as they pertain to the children before attempting to answer your request. This, of course, was necessary in view of the fact that neither your division nor our department had any facts upon which an opinion could be based.

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The Masonic Home for Missouri has been set up as a separate corporation for the management of the Home. It is, of course, a nonprofit corporation. There is no charge against any parent or guardian. In one or two cases voluntary contributions are made or have been made by a parent or guardian. The Home was established for a home for the Masons of Missouri or for their widows or other dependents. The admission of children whose fathers are not or were not Masons has been approved in some instances.

Neither the Home nor the local lodge guarantees anyone the right to apply for admission. The admission of a child to the Home can only be had upon the petition of some lodge who feels a responsibility to help some individual or some child. The Home acts for the Lodge in the care of the guests of the Home. Some lodges take care of charity cases at home and some request help at the Masonic Home.

The local lodge, at its request, can take a child from the Home at any time it deems proper. In one or two instances the superintendent of the Home has been the guardian of a child.

The Masonic Home does not and, of course, lawfully cannot, let out or attempt to let out a child to foster parents or for adoption. The Masonic Home furnishes the facilities, supervisory staff, and all things necessary for the physical, moral, mental and spiritual growth of the child, and to assist the local lodges properly in taking care of their charity cases, for which they are not equipped. No one, Mason or non-Mason, can petition the Home directly for admission. The Home will not assure any local lodge that they will take all or any particular person, adult or child.

Section 210.201, RSMo, Cumulative Supplement 1955, defines "Boarding home for children" as follows:

"(1) 'Boarding home for children' shall be held to mean a house or other place conducted or maintained by any person who advertises or holds himself out as conducting, for compensation or otherwise, a boarding house or place of residence for one or more children who are unattended by parent or legally appointed guardian, except day care homes or

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day nurseries as defined in sections 210.201 to 210.245."

Of course, in the present instance, there is positively no advertising by the Home under any definition of that word.

The words "holds himself out" or similar words or phrases such as "holds itself out," "holds out," "holding out," have quite often been used in statutory provisions pertaining to licenses in various fields or professions.

In the case of *People v. Hubbard*, 145 N.E. 93, there was an interpretation of what was meant by holding one's self out as an attorney. In that particular case the person involved told individuals that he was authorized to represent them in court; did inform them that he was admitted to practice and did represent individuals for hire. Of course, it was held that he "held himself out."

In the case of *State v. Snow*, 9 Pac. 697, it was held that when a man, by language and conduct, leads the world to believe that he and a woman were living and associating themselves together as husband and wife, that he was "holding himself out" as the husband because by his acts he led others to rely on and to believe that he was the husband.

In the case of *Commonwealth v. Doss*, a Virginia case, 167 S.E. 371, it was held that holding one's self out connotes a certain continuity of purpose.

In a Washington case, *State v. Kelsey*, 283 Pac. 2d 982, it was stated that a person holds himself out as a physician when he leads others to believe that he can lawfully engage in such practice.

It has been held, *People v. Wolin*, 2 Pac. 2d 60 (Cal.), that "holds out for sale" means "offers for sale."

In *Vincent v. The United States*, 58 Atl. 2d 829, the question is answered as to what is meant by the term "holds itself out," as that term is applied to a common carrier. The court there held that the words clearly imply that the carrier in some way makes known to its prospective patrons that its services are available. The court pointed out that

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this might be made known in various ways but, however it is made known, the essential thing is that there shall be a public offering of the service or, in other words, a communication of the fact that service is available to those who may wish to use it.

It is quite clear from the various court interpretations of the words "holds itself out" that the Home in question in no way whatsoever meets the standards the courts have used in interpreting that phrase. The Home definitely does not hold itself out to the public; it does not hold itself out even to the members of the Masonic fraternity; it does not hold itself out as a business; it does not hold itself out as being in an occupation.

From a reading of Chapter 210 of our statutes it is quite clear that the legislature intended to direct the requirements and standards therein set forth toward those who are in the business or follow the occupation, so to speak, of conducting a "boarding home for children," or "day care homes," or "day nurseries," or "child placing agencies."

CONCLUSION

From the foregoing facts and law it is our opinion that the Masonic Home of Missouri does not come within the provisions of Chapter 210, Cumulative Supplement 1955, and that there is no duty or responsibility of the State Division of Welfare to license or inspect that portion of the Masonic Home of Missouri devoted to the care of children.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours,

John M. Dalton
Attorney General

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