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*adoption*

LEGAL OPINION RELATIVE TO P.L. 1947, CHAPTER 393, DESIGNATED  
R.S. 1944, C. 22, SEC. 239A, RECOMMENDED BY GEORGE C. WEST,  
ASSISTANT ATTORNEY GENERAL, OCTOBER 22, 1947

This opinion is furnished in response to questions asked by the present Director of the Bureau of Social Welfare in his memorandum dated August 15, 1947, as follows:

1. Q. "Does the first sentence indicate any special procedural method regarding placement?"

A. The first sentence of this section reads as follows:

"The department of health and welfare shall be diligent in seeking opportunities to have children who have been committed to its custody placed with the proper persons for adoption."

The words which have been underlined in the above quotation are the important words or phrases in this section. The department shall be diligent in two ways:

- (1) seeking opportunities for adoption of committed children;
- (2) in seeing that such children are placed with the proper persons.

The word "diligent" may have several meanings, two of them at least are "industrious" and "careful".

(1) In seeking opportunities to have children placed for adoption "diligent" means "industrious". The department shall use diligence or industry in this particular aspect of the work. This means that all possible means available to the department shall be utilized to find adoptive homes for committed children, and handle all applications for adoption with dispatch.

(2) As to being diligent in placing children with proper persons, "diligent" means "careful", but not overcautious. The legislature certainly intended that the department should be careful and selective in finding proper adoptive parents.

At this point it should be well to note the policies on adoption, dated June 28, 1943, particularly the section entitled "Policies Relative to Adoptive Parents". The first four paragraphs in this section seem to be applicable under the new act.

It might also be well to mention section 241 of chapter 22 which provides for the placing of children in families or institutions of the same religious faith as that of the parents. This should be borne in mind in determining eligibility of adoptive parents.

2. Q. "Does the third sentence specifically mean that a thorough physical examination and a mental test are to be made?"

A. Yes.

The policy on adoption relative to the child which is stated in the mimeographed statement of the Division of Child Welfare, dated June 28, 1943, does not have to be changed because of this new statute. In that policy are the following statements which are pertinent to this question:

"A child should not be placed for adoption until it has shown development indicating normal physical and mental health.

"A child shall have a thorough physical examination and, if possible, examination by a psychiatrist or psychologist before he is placed in an adoptive home. The physical examination should include laboratory tests for syphilis and gonorrhea and, if there has been any history of tuberculosis in the family or the child shows any predisposition to the disease or general run-down condition, laboratory tests should also be made for tuberculosis."

The specific laboratory tests mentioned above are not exclusive but merely illustrative.

3. Q. "What does the word "normal" mean in the fourth sentence?"

- A. The word "normal" means average in both physical and mental condition. The sections from the policy on adoption, quoted above, which have been in effect for about four years, should still be used so far as physical aspects are concerned. "Normal" as it relates to mental condition means the average intelligence of a child of the age involved in the particular case.
4. Q. "What about children with superior intelligences?"
- A. The word "normal" as used in the fourth sentence of this section is a minimum standard. If a child is of superior intelligence he is above normal. Being above normal or average mentality does not prevent the child from being placed for adoption.
5. Q. "Do physical deformities, such as a clubfoot, mean that a child is abnormal and, therefore, cannot be placed for adoption?"
- A. No. I believe the intent of the legislature in requiring the department to note the physical and mental condition of the child is to prevent the placing of children with latent or hidden physical or mental defects. I believe that if a child has an obvious deformity the department may place such child for adoption where the prospective adoptive parents, knowing of this deformity, still desire to adopt the child.