

homes above mentioned within the licensing powers of the department of public welfare.

Section 10-520, R. C. M., 1947, provides as follows:

"Any person owning or operating a home or institution into which home or institution he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value and which child is neither his son, daughter, ward, nor related to him by blood, shall be deemed to be an 'operator' of a 'foster home or boarding home' within the meaning of this Act, except that this Act shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian or relative of such child. The word 'person' where used in this Act, shall include any individual, partnership, voluntary association or corporation."

Section 10-521, R. C. M., 1947, further provides:

"No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this Act without first securing a license in writing from the division of child welfare services of the state department of public welfare. No fee shall be charged for such license."

If these homes meet the requirements set forth in Section 10-520, supra, it follows by virtue of Section 10-521, supra, that the state department of public welfare has authority to license them.

Section 10-520, supra, defines an operator of a foster home and sets forth three conditions which must be met before a person will be considered to be such an "operator." These conditions are (a) the person must operate a home or institution into which he takes a child, or children, for the purpose of caring for them and maintaining them, (b) he must receive money or other consideration of value for his service, and (c) the child must not be related to the operator by blood.

Opinion No. 74.

**"Day-Care Homes," Licensing of—
Licenses—State Department
of Public Welfare.**

HELD: That so-called "day-care homes" are included in the definition of "foster home or boarding home" as set forth in Section 10-520, R. C. M., 1947, and that, therefore, the state department of public welfare is authorized to issue licenses to persons operating such homes.

May 4, 1954.

State Board of Public Welfare
North Ewing and Tenth Avenue
Helena, Montana

Gentlemen:

You have requested my opinion as to whether the department of public welfare has the authority to license so-called "day-care homes" which are operated for profit and in which the operators care for children of working parents during several hours of each day.

You inquire as to whether Sections 10-520 to 10-523, R. C. M., 1947, may be reasonably interpreted to include those

Clearly, the homes in question meet all three of these qualifications, and the next consideration that must be resolved is whether these homes come within the exclusion provision of the statute. Section 10-520, *supra*, excepts from the purview of the law any person who (a) accepts such custody or care of a child on a temporary basis, and (b) does so simply as a temporary accommodation for the parents. The question then resolves itself into what is meant by the word "temporary." Webster defines "temporary" to mean:

"1. Lasting for a time only, existing or continuing for a limited time;

"2. Intended to last for a time only; not permanent."

The statute clearly contemplates exemption in cases where the care of the child is undertaken in a single instance as an accommodation to the parents and not as a continuing business. The operation is not a temporary one from the standpoint of the operator if he handles many children on a continuous basis, even though the care of any single child may be a temporary arrangement. Consequently, any day-care institution operating on a continuing basis is not excluded from the licensing requirement.

It is, therefore, my opinion that the so-called "day-care homes" are included in the definition of "foster home or boarding home" as set forth in Section 10-520, *supra*, and that, therefore, the state department of public welfare is authorized to issue licenses to persons operating such homes.

This opinion is not to be construed as determining the constitutionality of the statutes considered herein.