

**Orphans' Home, Consent to Adoption of Children. Children Adopted From Orphans' Home. Adoption of Children in Orphan's Home.**

Where children in the orphans' home are adopted the trustees may consent to such adoption in writing duly acknowledged without the presence of such trustees before the judge of the district in which the adoption is made.

Helena, Montana, March 5, 1908.

Mr. Wylie Mountjoy,  
Superintendent, State Orphans Home,  
Twin Bridges, Montana.

Dear Sir:—

Your letter of March 3rd, regarding the alleged necessity of the board of trustees being present in the district court of the county in which an orphan child is being adopted, received; also blank forms which we heretofore prepared and sent to you. You will notice that we have changed the form of the consent of the board of trustees by adding

an acknowledgment thereto. This acknowledgment should be made before a notary public or some county officer having an official seal.

We have also changed the form of the order for adoption by striking out the words "before me" and inserting in lieu thereof "and duly acknowledged by them." If you have printed form struck off it would be well to omit by them". If you have printed form struck off it would be well to omit from the title of each form the words "Fifth" and "Madison" leaving the blanks so that the number of the district and county could be filled in. In other words, it is not necessary for a majority of the board of trustees, or any of them, to appear before the judge of the district court of the county where the person adopting a child resides. Section 313 Civil Code as it read before it was amended by the laws of 1897, page 229, made it necessary to secure the consent of the child's parents, if living, except where they were deprived of civil rights, or adjudged guilty of adultery, cruelty or desertion, or where they had been judicially deprived of the custody of the child.

Section 315 simply provided that the persons adopting a child and the child adopted, and the other persons, if within or residents of the State, whose consent is necessary must appear before the Judge of the district court of the county where the person adopting resides.

The purpose of this law is very apparent, namely, that it was to give the persons, if living within the state, an opportunity to object to the adoption and to give the judge an opportunity of personally interrogating them as to their wishes in the matter. The amendment of Section 313, by the laws of 1897, provides, however, that in cases where children are cared for in the orphans home for a period of one year or more without the parent contributing at least sixty per cent. of the legitimate cost of keeping and maintaining the child and then consent of the parent is not necessary to the adoption of such child. In such cases, as well as others mentioned in said Section 313, as amended, the law provides that the board of trustees of the orphans home may consent to the adoption of the child; and it further provides that such "consent shall be given in the same manner that parents are authorized by law to consent to the adoption of their children."

In our opinion, this phrase simply means that the consent must be in writing in the same manner that the consent of parents must be in writing, but that it does not mean that a majority of the board of trustees must appear before the district judge and there hold a meeting for the purpose of officially acting upon the matter of consenting to the adoption. Where they have acted as a board and signed a written consent to the adoption of the child, and have duly acknowledged that they have executed such consent before an officer authorized to take acknowledgments, in our opinion it is sufficient to give the court jurisdiction to act upon such adoption without having the trustees personally present before it.

As to the validity of prior adoptions consented to by the trustees, we think no serious question can be raised for the reason that in all cases where the trustees are authorized by law to consent to the adoption

of a child, the right of the parents to object to the adoption, and the necessity of their consent thereto, has already ceased to exist under the provisions of said Section 313 as amended.

Therefore, they could not question the legality of such adoption, and the trustees who signed a written consent, would be estopped from questioning it where the court was satisfied to act upon such written consent without the trustees appearing in person or without the same being acknowledged before an officer.

Very truly yours,

ALBERT J. GALEN,

Attorney General.