

Adoption—Bureau of Child Protection—Consent—Parents—Children.

Where the mother of an illegitimate child agrees in writing that the child shall be by the court declared a dependent child and the custody awarded to the bureau of child and animal protection she cannot make a legal claim for the child after it has been adopted.

Mrs. Maggie Smith Hathaway,
Secretary, Bureau of Child Protection,
Helena, Montana.

My dear Mrs. Hathaway:

You have requested my opinion on the following question:

“Can a mother voluntarily release her baby, through the filling out, filing, etc., of papers like those enclosed, and later make legal claim for the child after it has been adopted?”

The papers enclosed consist of (first) a written waiver under oath by the mother of the child whereby she agrees that the child be declared a dependent child and the custody and control awarded to the bureau of child protection of the state of Montana, and that said bureau be authorized to appear and assent to the adoption of said child in any court where adoption proceedings are pending; (second) a petition praying the court to declare said child a dependent child and to award the custody of the same to the bureau; (third) an order of the court granting the prayer of the petition.

Section 5859 R. C. M. 1921 provides in part as follows:

“A legitimate child cannot be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother, if living; except that consent is not necessary from a father or mother deprived of civil rights, * * * or who has been judicially deprived of the custody of the child on account of cruelty or neglect, * * *.”

From the foregoing papers submitted it is evident that the mother of the child in question was judicially deprived of the custody of the child within the meaning of section 5859, supra, and it is therefore my opinion that she cannot make a legal claim for the child after it has been adopted.

Very truly yours,

L. A. FOOT,
Attorney General.