

## No. 98

**ADOPTION—DEPENDENT CHILD—PUBLIC WELFARE—CHILD WELFARE SERVICES—CONSENT TO ADOPTION, Who May**

- Held:**
1. The State Department of Public Welfare has authority to accept custody of dependent child when awarded by a court.
  2. The court may authorize the Director, Consultant, or any worker of the Division of Child Welfare Service to consent to the adoption of a dependent child, custody of whom has been awarded by the court to the State Department of Public Welfare.

April 25, 1941.

Mr. John Coey, Director  
Division of Child Welfare Services  
State Department of Public Welfare  
Helena, Montana

Dear Mr. Coey:

You have called to my attention certain facts upon which you request an opinion. The facts are as follows:

A Judge of a District Court, under the provisions of Chapter 152, Code of Civil Procedure, 1935, made an order declaring a minor child a dependent child and awarded the custody of said child to the "Child Welfare Services of the Department of Public Welfare of the State of Montana," and ordered that the "Secretary or any Deputy of said Department is hereby authorized to consent to the adoption of said child at any future time." Subsequently, a petition for adoption was filed before another District Judge by persons seeking to adopt said child. Consent to such adoption was signed by one of your personnel who designated herself as "Consultant of the Child Welfare Service, Department of Public Welfare of the State of Montana." Two questions have arisen,

1. May the court award such child to the custody of the Department of Public Welfare of the State of Montana?
2. May the court authorize said Department to consent to the adoption of such child, and if so may any of the regular personnel sign such consent?

Section 10470, Revised Codes of Montana, 1935, provides that, if upon a hearing the child shall be found to be a dependent child, the court may make an order committing it to the state orphans' home, or may make such disposition of said child as it seems best for its moral and physical welfare.

Section 10471 provides:

"In any case where the court shall award any dependent child to the care and custody of any association or individual in accordance

with the provisions of this Act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall, by and with the consent of the court, have authority to place such child in a suitable family home, with or without any indenture, and may, by attorney or agent, appear in any court where adoption proceedings are pending, and assent to its adoption. Such assent shall be sufficient to authorize the court to enter the proper order or decree of adoption. . . ."

The Department of Public Welfare of the State of Montana is created and organized under the provisions of Chapter 82, Laws of 1937. Under the provisions of this Act, the Administrator, with the consent of the State Board, is authorized to establish divisions in the state department for the administration of the Act, and to allocate and re-allocate functions between divisions as may be necessary and desirable for competent administration. (Sec. V, Part 1.) The Act is divided into several parts, each dealing with a specific phase of public welfare services. Part VI of the Act deals with services to crippled children and child welfare services. By this part, all the powers and duties of the State Bureau of Child Protection is transferred to the State Department of Public Welfare. Under this part also are set up the specific powers and duties of the State Department with reference to these services. Under Section IV of Part VI, Chapter 82, Laws of 1937, as amended in part by Section 20, Laws of 1939, we find the following provisions pertinent to the questions here considered,

- "(a) Perform the duties and have all the powers formerly invested and exercised by the State Bureau of Child Protection . . .
- "(b) Select and appoint, from a qualified list, such personnel as are necessary to efficiently supervise and perform the purposes of this Part.
- "(j) Accept the guardianship or custody of children committed by the courts to the state department and arrange for their care in family foster homes or otherwise in cooperation with county department of public welfare."

It will thus be seen the State Department is authorized to accept custody of children committed by the courts. While it has not specifically provided that courts may award custody of such children to the State Department, yet it is clear that, in specifically authorizing the department to accept such custody, the legislature intended the courts have authority to make such award.

In pursuance to authority granted, the State Administrator, with the consent of the State Board, has established the Division of Child Welfare in the Department of Public Welfare and has allocated certain functions to such division, among which are caring for neglected and dependent children and placing them in family foster homes and otherwise performing the duties formerly vested in and exercised by the State Bureau of Child Protection. Likewise, in pursuance to authority granted by Section IV of Part VI, supra, the State Department has selected and appointed certain personnel to perform the functions of the Division of Child Welfare Service. Among such personnel are designated "consultant" and "worker." The head of the Division is designated as "Director of Child Welfare Service." These designated personnel then may be considered as agents of the department or division. Section 7928, Revised Codes of Montana, 1935, defines an agent as one who represents another. Webster's New International Dictionary defines an agent as "a field worker from a private or public welfare bureau."

The court having authority to award custody to the State Department and the Department having authority to accept such custody, it follows the Department—through its personnel or agent—may, if so designated by the court, consent to the adoption.

It is therefore my opinion that, under the order in question here, awarding the custody to the Child Welfare Services of the Department of Public Welfare, authorizing the "Secretary or any Deputy of said Department" to consent to the adoption of said child, a duly appointed "consultant" or "worker" of the Division of Child Welfare Services of the Department of Public Welfare may consent to the adoption under the order of the court here considered.

It may not be amiss here to point out that, in order to avoid confusion and for the sake of uniformity, a form of petition, order and consent be adopted by the Department for use in all the Judicial Districts of the State. And in this connection we might suggest that the wording in the order awarding the child be to "The Division of Child Welfare Services of the State Department of Public Welfare of the State of Montana." And further, in designating the person authorized to consent to such adoption, the wording be, "The Director, Consultant or any Worker of the Division of Public Welfare of the Department of Public Welfare of the State of Montana."

Very truly yours,

JOHN W. BONNER  
Attorney General