

Opinion No. 6.**Adoption Proceedings—Public Records
—Order Books—Registry of
Actions—Clerk of the
District Court.**

HELD: Orders of adoption are not to be recorded in an order book by the Clerk of the District Court. However, in accordance with Sections 16-3001 (3) and 93-8707, R. C. M., 1947, all matters pertaining to adoption proceedings shall be noted in the registry of actions with brief notes.

February 7, 1953.

Mr. Robert T. Pantzer
County Attorney
Park County
Livingston, Montana

Dear Mr. Pantzer:

You have requested that I issue an official opinion on the following question:

“Are orders of adoption to be copied and recorded in the order book by the Clerk of the District Court?”

The question arises due to the prohibition contained in Section 59-512, R. C. M., 1947.

“The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person . . .”

“No files in the office of clerk of the district court relating to the adoption of children shall be open to examination or inspection by any person unless the person desiring to examine or inspect any such file shall first obtain written permission from

the district judge, and no district judge shall grant any applicant permission to examine or inspect any such file in the office of clerk of the district court unless such applicant shall set forth in his application good and sufficient cause for such examination or inspection."

The effect of this statute is to remove matters pertaining to adoption proceedings from the above quoted section. The ministerial functions of the office of clerk of the district court are not involved; rather, it is a declaration on the part of the state, acting in *parens patriae* to the child, that adoption proceedings are not to be made accessible to the inquiring public.

The rationale of this statute has been summed up as follows:

"For obvious reasons neither the adopted child nor the foster parents consider it proper or necessary for the legal aspect of such a tender and personal relationship to be open to public scrutiny; and our legislative assembly has not been insensible to this fact. Both laws here in question evidence strongly the intent of the legislative assembly to guarantee the secrecy of such proceedings from the common gaze. Each provides security and privacy for the adoption files." Vol. 21, Opinions of the Attorney General, Opinion No. 194, page 266.

There is no provision in our laws which authorizes the clerk to record matters pertaining to adoption in an order book. Section 61-133, R. C. M., 1947, announces that the judge, if satisfied that the interest of the child will be promoted by the adoption, must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting. Section 69-525, R. C. M., 1947, details the steps which the clerk must follow upon receipt of the order. The procedural steps outlined by this section illustrate the high degree of secrecy which the legislature has placed upon adoption matters.

The mandate of this statute is unambiguous. All matters relative to adoption are to be removed from the scrutiny of the inquiring public. If the

orders of adoption were placed in the general orders book with other orders which are not secured by legislative directives as to secrecy, Section 59-512, *supra*, would be of no effect.

However, since adoption matters are within the jurisdiction of the district court, which is a court of record, such matters must appear in official files. The absence of a record would subject the adoption to attack as being an extra judicial act, and, therefore, void. *State vs. Houlehan*, 109 Me. 281, 83 Atl. 1106; *O'Malia vs. State*, 207 Ind. 308, 192 N. E. 395.

In recognition of the rule that a record must be maintained of all actions brought in a court of record, Section 16-3001, R. C. M., 1947, provides that the clerk of the district court shall:

" * * * * *

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the code of civil procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;"

Section 93-8707, R. C. M., 1947, enlarges upon this requirement by declaring:

"The clerk must keep a register of actions. The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein."

By causing an entry to be made in the registry book the clerk can maintain the requirements as to secrecy and, at the same time, comply with the necessity of preserving a record of the adoption proceedings. Since there is no statutory requirement that adoption orders be recorded, and in view of the cloak of privacy which has been placed over such matters, the clerk of the district court is not authorized directly or impliedly to copy and record orders of adoption in the order book.

It is therefore my opinion that orders of adoption are not to be recorded in an order book by the clerk of the district court. However, in accordance with Sections 16-3001 (3) and 93-8707, R. C. M., 1947, all matters pertaining to adoption proceedings shall be noted in the registry of actions with brief notes.