

**VOLUME NO. 36**

**Opinion No, 96**

**ADOPTION — Attorneys acting as adoption agencies must be licensed by S.R.S.; ATTORNEYS — Must be licensed by S.R.S. to act as an adoption agency; SOCIAL AND REHABILITATION SERVICES — Attorney acting as an adoption agency must be licensed; Chapter 7, Title 10, R.C.M. 1947; Sections 10-701, 10-702, 10-703, 10-706, R.C.M. 1947.**

**HELD: A private attorney, who is not licensed by the Department of Social and Rehabilitation Services as an adoption agency, may not accept a relinquishment of custody for a child and then place or attempt to place the child with a family chosen by the attorney for adoption.**

August 19, 1976

Mr. Thomas H. Mahan  
Department of Social and  
Rehabilitation Services  
P. O. Box 1723  
Helena, Montana 59601

Dear Mr. Mahan:

You recently requested my opinion on the following question:

In view of Section 10-706, R.C.M. 1947, as amended, may a private attorney, who is not licensed by S.R.S. as an adoption agency, accept a relinquishment of custody from an unwed mother before the child is born, and then after its birth, place or attempt to place the child with a family chosen by the attorney for adoption?

Chapter 7 of Title 10, R.C.M. 1947, **Child Adoption Agencies**, provides for the licensing of adoption agencies in Montana. Specifically, section 10-702, R.C.M. 1947 provides as follows:

No persons shall act as an agency for the procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes, or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this act. Licenses shall be valid for the balance of the calendar year in which issued. No fee shall be charged for such license.

"Person" is defined in section 10-701, R.C.M. 1947 to include "any individual, partnership, voluntary association, or corporation". "Agency" is defined in the same section to include "a person not related by blood or marriage to a minor child to be adopted".

Section 10-703, R.C.M. 1947 authorizes the Department of Social and Rehabilitation Services to issue licenses to adoption agencies. The statute sets forth the minimum requirements for the agencies, including:

- (1) The chief function of the agency must be the care and placement of minor children.
- (2) The agency must operate on a nonprofit basis and be financially responsible for its operation.
- (3) The direction or managing personnel of the agency must be qualified both on the basis of professional education and personality.

Section 10-706, R.C.M. provides the penalty for violation of the act as follows:

(1) Any person who maintains or conducts an agency for procuring the adoption of minor children, or assists in the maintaining or conducting of such agency, without first obtaining a license, is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000).

(2) Upon the first conviction of a person for violation of this section the court, instead of imposing the prescribed sentence, may enjoin the offender from any further action in violation of this section.

Nowhere does the act exempt attorneys from its provisions. The court in **Goodman v. District of Columbia**, 50 A.2d 812, 814, (D.C. App. 1947), faced with construction of a similar act, held that the act applied to attorneys. The court stated:

We look in vain for any token of intention within the statute that the placing of babies by lawyers should be in any different or forgiven status than such placing by citizens in any other class. No court has said that such statutes do not apply to lawyers. No scrutiny of the sections involved can yield up such an exemption by mere process of judicial construction.

In a similar case, the court in **In Re Adoption of Anonymous**, 46 Misc. 2d 988, 261 N.Y.S. 2d 439, 442 (1965) commented on the purpose of acts similar to Chapter 7, Title 10, *supra*.

The statute establishes guidelines, which are mandatory, so as not to risk the future security of the child and the happiness of the adoptive parents and the natural mother.

The motivation and professional approach which welfare departments and authorized adoption agencies can give cannot be substituted for one unskilled in social work, no matter how benevolent his motives, in investigating and evaluating the material elements of an adoption proceeding, in placing a child in a family unit.

Basic to the proper handling of an adoption is the social history investigation in order to insure, together with the court's determination, legal protection for the child, the natural parent and the adoptive parents.

**THEREFORE, IT IS MY OPINION:**

A private attorney, who is not licensed by the Department of Social and Rehabilitation Services as an adoption agency, may not accept a relinquishment of custody for a child and then place or attempt to place the child with a family chosen by the attorney for adoption. Such action would violate section 10-702, R.C.M. 1947 and subject the attorney to the penalties provided in section 10-706, R.C.M. 1947.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General