OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Weaver H. Baker, Chairman
State Board of Control
Austin, Texas

Dear Sir:

Opinion No. O-5697
Re: Authority of State Orphans' Home to place children in the home of proposed foster parents for trial periods as provided by Sec. 3 of Art. 46a

Your letter requests our opinion on the interpretation of Article 3212, R. C. S., 1925, which relates to the release of children from the State Orphans' Home at Corsicana, Texas, as follows:

> "Is the superintendent, under the provisions of Art. 3212, R. C. S., 1925, permitted to place children in the home of persons other than the natural parents or duly appointed guardians for temporary periods such as three or four months until it is determined how well the child adjusts to the foster parents, and how well they adjust to the child? In determining this question, please keep in mind Art. 46a, 53, V. A. C. S., which deals with the adoption of children.
>
> "This question is on the assumption that the State Orphans' Home would not release the child permanently, but would place him on furlough for this period of observation, and after it was seen that the child would do well in the home, the foster parents would then be asked to apply for guardianship of the child's person. Upon their appointment as guardians, the State Orphans' Home would discharge the child completely from its jurisdiction."

There is no conflict between Article 3212 relating to the removal of children from the State Orphans' Home and Article 46a, Section 3 of the general adoption statutes. Article 3212 provides that:

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

"No person shall be permitted to remove a child from said home except under such lawful rules and regulations as the Board may adopt. In no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption."

Article 46a, Section 3, provides:

"No petition for the adoption of any minor child shall be granted until the child shall have lived for six months in the home of the petitioner; provided, that this requirement may be dispensed with upon good cause shown in the discretion of the Court, when the Court is satisfied that the home of the petitioner and the child are suited to each other."

These two statutes should be read and construed together. The surest guide to a correct construction of a statute is secured by ascertaining the purpose its makers intended it should accomplish. The object of the Texas Legislature in enacting the State's adoption statutes was to secure for the adopted child a legal status which would most closely approximate that provided by the natural parents and the home of natural parents. The public interest and the welfare of the child are dependent upon an interpretation of the adoption statutes which will do least violence to natural laws. To hold that, "in no case", shall a child be removed from the State Orphans' Home by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption, would operate to defeat the benevolent intent of our adoption statutes. Children, who might otherwise be placed in good homes, would be forced to remain in the institution.

It is significant to note that Article 3212 was passed in 1887. At that early date our adoption statutes provided simply for, "adoption by deed". The Legislature in 1931, realizing a need for reform, amended our adoption statutes and provided for a petition to the District Court and further provided for a six months trial period before granting of the petition by the Court.

Placing of the child in the home of persons, other than the parent or guardian of the child, for a temporary trial period as provided by the adoption statutes, does not amount to removal from the State Orphans' Home as contemplated in Article 3212. The institution would retain jurisdiction over the child for the six months trial period, and, if at the end of this trial period it appears that the child and the prospective parents are suited to each other, the State Orphans' Home would, when the child was legally adopted, discharge the child completely from its jurisdiction and control.

We trust that the foregoing answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED FEB 19, 1944

C. G. Blackburn

Deputy ATTORNEY GENERAL OF TEXAS

By Fred C. Chandler
Fred C. Chandler
Assistant

By H. T. Bob Donahue
H. T. Bob Donahue

HTBD/pw

APPROVED
OPINION
COMMITTEE
BY C. A. C.
CHAIRMAN