



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 24, 1947

Honorable John H. Winters,
Executive Director,
State Department of Public Welfare,
Austin, Texas

Opinion No. V-311

Re: Procedure for adoption of a child born to an unwed mother, inmate of a State insane hospital.

Dear Sir:

You make the following request for an opinion from this department upon the above captioned subject matter.

"On January 1, 1947 a child was born to an unmarried girl who was at the time and still is an inmate of one of the State mental hospitals. The mother of the child was duly committed to the institution pursuant to a lunacy judgment.

"Of course, the child cannot be reared in the State mental hospital with its mother, and the department has been requested to assist in the placement of the child for adoption. In discussing the adoption proceedings with the District and County Judges of the county from which the mother of the child was committed they raised the following questions about the proceedings.

"The first question had reference to the matter of jurisdiction since the State hospital where the child was born is situated in a county other than the one from which the mother was committed. Does the county where the child was born, or the county from which the mother was committed have jurisdiction?

" c e e

"We shall appreciate your opinion as to whether or not there is any way whereby the child may be adopted while the mother is mentally ill and confined to a State hospital. If so, what is the correct procedure for terminating the parental authority?"

In opinion No. V-42 addressed to Honorable Charles C. Ashley, Chairman, State Board of Control, this department advised with respect to a similar question that, "a child born to a woman who has been lawfully committed to a State mental institution may be lawfully adopted under the general statutes of adoption; . . ."

There are two features which make the case an unusual one under the adoption laws. The mother is an unmarried girl and, moreover, was at the time of the birth, and still is an inmate of one of the State mental hospitals.

The pertinent general statutes applicable to your inquiry are the following:

House Bill No. 369 passed at the Regular Session of the 50th Legislature, in Section 1 declares:

"Any adult person may petition the district court in any of the following counties:

- (1) The county of his residence,
- (2) The county of the residence of the child to be adopted, . . . for leave to adopt a minor child: Such petition shall set forth the facts relative to petitioner and child, and be verified by the affidavit of the petitioner. . ."

Section 6 of Article 46a, Vernon's Civil Statutes provides:

"Except as otherwise amended (provided) in this section, no adoption shall be permitted except with the written consent of the living parents of a child;

" . . .

" . . . Consent shall not be required of parents whose parental rights have been terminated by order of the juvenile court or other court of competent jurisdiction; provided, however, that in such cases adoption shall be permitted only on consent of the superintendent of the home or school or of the individual to whom the care, custody, or guardianship of such child has been transferred by a juvenile court or other court of competent jurisdiction.

"In case of a child not born in lawful wedlock the consent of the father shall not be necessary."

Since the child in question was not born in lawful wedlock, the consent of the father is unnecessary; and, since the mother is insane she is incapable of giving her consent.

There is no exception to the statutory requirement for consent of a parent because of insanity, so that it becomes necessary to determine whether or not it may be dispensed with under the provision immediately above quoted as one "whose parental rights have been terminated by order of the juvenile court or other court of competent jurisdiction." The question of an order of the juvenile court is out of consideration for the child is not of juvenile age.

We are of the opinion that the proper procedure is for some interested person to make application to the county court for appointment as guardian in the county where the mother and infant reside (Art. 4111) whereupon such guardian would be statutorily "entitled to the charge and control of the person of the ward and the care of his support and education," (Art. 4122) and the order itself should terminate the mother's parental rights under Section 6 of Article 46a as amended, (39 C.J.S. p. 89, c) The guardian thus appointed would be authorized to consent to the adoption of the child.

In such a guardianship proceeding it would be proper to make the mother a party and she should be actually served with notice therein by physical delivery of the notice to her by the officer serving the process, and

the Court should appoint a guardian ad litem attorney to represent her.

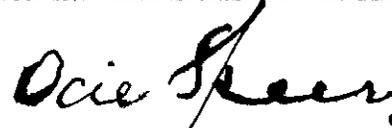
SUMMARY

A child born of an unmarried woman inmate of a State insane hospital may be lawfully adopted under Texas law. The proper procedure would be to have a guardian appointed for the person of the child and an order of the appointing court terminating the parental rights of the mother. (Art. 4162 V.C.S.) The guardian thus appointed would be authorized to consent to the adoption of the child. (Art. 46a, V.C.S. Sec 6, 39 C.J.S. p. 89,c)

Yours very truly,

ATTORNEY GENERAL OF TEXAS

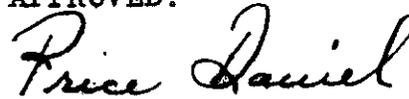
By



Ocie Speer
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OS:wb

APPROVED:



ATTORNEY GENERAL