



TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON JUVENILE JUSTICE & FAMILY ISSUES

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JUN 05 1998

GOVERNMENTAL INQUIRY
UNIT

TOBY GOODMAN
CHAIRMAN

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
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FILE # ML-40296-98

I.D. # 40296 May 29, 1998

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JUN - 9 1998

Opinion Committee

The Honorable Dan Morales
Attorney General, State of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-1144

Re: Request for Attorney General's Opinion Regarding Advertising for the Placement of
to Provide or Obtain a Child for Adoption

Dear General Morales:

Historically, Texas has taken a strong stand against the "selling" of children for adoption or for other purposes. The Legislature has enacted Penal Code § 25.08, which provides that it is a criminal offense for a person to offer to accept, agree to accept, or accept a thing of value for delivering a child to another for purposes of adoption. Additionally, it is an offense for a person to offer to give, agree to give, or give a thing of value to another for acquiring or maintaining a child for the purpose of adoption. The statute does permit payments of fees authorized by law to child-placing agencies, however.

In 1995, in enacting Family Code § 162.025, the Legislature prohibited intermediaries from bringing together birth parents and adoptive parents. Additionally, this section prohibited persons, other than birth parents, adoptive parents, legal guardians or licensed child-placing agencies from placing children. Clearly, a parent may place her own child for adoption without committing a criminal offense under this section and may on her own identify a prospective adoptive parent. Likewise, an adoptive parent can identify a birth parent and not commit an offense.

The 75th Legislature enacted Penal Code § 25.09. This provision establishes criminal penalties for advertising in the public media to place a child for adoption or to provide or obtain a child for adoption.

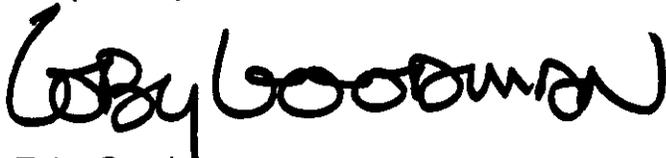
COMMITTEE MEMBERS:

TODD STAPLES - VICE CHAIRMAN, JESSE JONES, RUTH JONES McCLENDON,
JIM McREYNOLDS, ELLIOTT NAISHTAT, ARTHUR REYNA,
TODD SMITH, TOMMY WILLIAMS
CONNIE JOHNSON, CLERK

The House Committee on Juvenile Justice and Family Issues respectfully submits the following for your opinion:

- 1) Does Penal Code § 25.09 prohibit a birth parent or expectant parent from advertising in the public media to provide a child for adoption or to place a child for adoption? In sum, is a birth parent who may lawfully place a child for adoption prohibited from advertising that she will place a child for adoption or is she prohibited from advertising that she wishes to locate a prospective adoptive parent?
- 2) Does Penal Code § 25.09 prohibit a prospective adoptive parent who wishes to adopt a child from advertising in the public media that she wants to obtain a child for adoption? In sum, is a prospective adoptive parent who may lawfully identify a birth parent prohibited from advertising that or she wishes to locate a birth parent in order to obtain a child for adoption?
- 3) If a person who is not permitted by Penal Code § 25.09 to advertise, places an advertisement in the public media and the public media makes such advertisement available, does the public media commit an offense under § 25.09? Please consider the application of Penal Code § 7.01 or § 7.02 in rendering your opinion on this question.
- 4) Does either Penal Code § 25.09 or Family Code § 162.025 prohibit the placing of an advertisement or other communication on the Internet by a person outside of the State of Texas who offers to serve as an intermediary to bring together a birth parent and a prospective adoptive parent, provided that either the birth parent or the prospective adoptive parent receives the advertisement in Texas?

Respectfully submitted,

A handwritten signature in black ink that reads "Toby Goodman". The signature is written in a cursive, flowing style.

Toby Goodman
Chairman