



STATE OF KANSAS

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May 21, 1986

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ATTORNEY GENERAL OPINION NO. 86- 73

The Honorable Larry E. Erne
Representative, 7th District
P.O. Box 882
Coffeyville, Kansas 67337-0882

Re: Public Health -- Maternity Hospitals or Homes and
Homes for Children -- Legality of Private Adoption
Agencies

Synopsis: Private adoption agencies must be licensed and are
regulated by the State of Kansas. Recent
legislation has mandated reasonable fees and
increased the court's role in private adoption
proceedings. Cited herein: K.S.A. 65-501 et
seq.; K.S.A. 1985 Supp. 59-2278c; K.A.R. 28-4-170
et seq.; 28-4-171.

* * *

Dear Representative Erne:

As State Representative for the Seventh District, you request
our opinion concerning the legality of private adoption
organizations operating within the State of Kansas.
Specifically, you are concerned with the fees charged by these
organizations and question what, if any, regulations control
them.

K.S.A. 65-501 states:

"It shall be unlawful for any person, firm, corporation or association to conduct or maintain a maternity hospital or home, or a boarding, receiving or detention home for children under 16 years of age without having a license or temporary permit therefor from the secretary of health and environment. Nothing in this act shall apply to any state institution maintained and operated by the state." (Emphasis added.)

K.S.A. 65-503(a)(3) states:

"'Boarding home for children,' as used in this act, means:

. . . .

"an association, organization or individual engaged in receiving, caring for or finding homes for children under 16 years of age who are orphans, children in need of care, deprived children or children who need day care, or a place maintained by such association, organization or individual for the purpose of caring for children under 16 years of age;" (Emphasis added.)

A private adoption agency must comply with the provisions of K.S.A. 65-501 et seq. K.A.R. 28-4-171. These statutes grant the Secretary of Health and Environment and the Secretary of Social and Rehabilitation Services broad powers in the areas of agency fees, licensing, inspection, recording, advertising, regulating types of clients and employees, and imposing penalties. See K.S.A. 65-501 et seq. and K.A.R. 28-4-170 et seq.

Recent concerns of unreasonable adoption fees have resulted in legislation limiting adoption payments while expanding the court's role in adoption proceedings. K.S.A. 1985 Supp. 59-2278c states:

"(a) Except as otherwise authorized by law, no person shall request, receive, give or offer to give any consideration in connection with the adoption of a child, or the placement of a child for adoption, other than:

"(1) Reasonable fees for legal and other professional services rendered in connection with the placement or adoption;

"(2) reasonable fees of a licensed child-placing agency;

"(3) actual and necessary expenses incident to placement or to the adoption proceeding;

"(4) actual medical expenses of the mother attributable to pregnancy and birth;

"(5) actual medical expenses of the child; and

"(6) reasonable living expenses of the mother which are incurred during or as a result of the pregnancy.

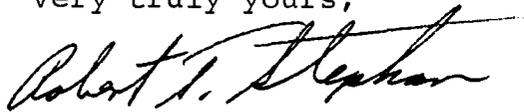
"(b) In any action for adoption of a child, a detailed accounting of all consideration given, or to be given, and all disbursements made, or to be made, in connection with the adoption and the placement of the child for adoption shall accompany the petition for adoption.

Upon review of the accounting, the court shall disapprove any such consideration which the court determines to be unreasonable or in violation of this section and, to the extent necessary to comply with the provisions of this section, shall order reimbursement of any consideration already given in violation of this section." (Emphasis added.)

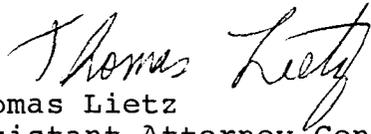
What constitutes an unreasonable fee, in light of K.S.A. 1985 Supp. 59-2278c(a)(2), is a case-by-case determination to be made by the court. For an indication of what may be deemed reasonable, see "Independent Adoption: Regulating the Middleman," Natalie Hagg Wallisch, 24 W.L.J. 327 (1985).

In conclusion, private adoption agencies must be licensed and are regulated by the State of Kansas. Recent legislation has mandated reasonable fees and increased the court's role in private adoption proceedings.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General

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