

1803.

ADOPTION—WHEN CHILD CARING INSTITUTION MAY CONSENT TO
A CHILD'S ADOPTION BY PROCEEDINGS IN A FOREIGN STATE.

SYLLABUS:

Under the provisions of Section 1352-12 of the General Code a child caring institution approved by the Division of Charities of the Department of Public Welfare of the State of Ohio, to which there has been surrendered a child under an agreement which authorizes such institution to consent to the adoption of the child, may consent to the adoption of said child in a proceeding for adoption instituted in a state other than Ohio if, in the judgment of the managers of said institution, such a procedure is for the welfare of the child. The effect of such consent, however, as to the ultimate legal status of the child, is, of course, a matter depending upon the provisions of the laws of the state in which such a proceeding is had.

COLUMBUS, OHIO, April 21, 1930.

HON. HAL H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion as follows:

“A child who is a resident of Ohio is surrendered by its parents to a child caring institution of this state recognized by the Division of Charities. The commitment is made in the form prescribed by the Department of Welfare; subsequently, the child, with the consent of the institution in question, goes to the State of Pennsylvania, and in that state proceedings are brought for the purpose of adoption of this child.

Please advise this Department whether, under the provisions of the law of Ohio, the institution in question has the right to consent to the adoption of the child by a Pennsylvania court.”

The practice of one person adopting the offspring of another so as to give the child the status of heir of the parent, by adoption, is of ancient origin. In fact such procedure was recognized in the Justinian Code and even prior thereto. However, such procedure was unknown to the common law of England and it follows that such procedure may be had in this country only in pursuance of statutory authority.

Sections 8024 et seq., of the General Code set forth the statutory requirements in order to complete an adoption proceeding in the State of Ohio. By the terms of Section 8025, General Code, before an order of adoption may be made if the child is more than thirteen (13) years of age it must give its written consent. Also each of the living parents must consent. However, there are many exceptions to the general rule above stated, with reference to the consent. Paragraph (f) of said section reads:

“If the parent or parents having the legal custody give the custody of such child for the full term of its minority to any institution or agency established under the laws of the state to care for children and under the approval of the board of state charities, or if such institution or agency has otherwise legally acquired the custody and control of such child, the president or secretary of such institution or agency shall file a certified copy of the consent of the board of trustees, or of the proper officers authorized by such institution or agency to act in matters of adoption; and if such child is a ward of the board of state charities or other state board, the secretary of such board shall file a certified copy of the consent given in accordance with its rules.”

Section 1352-12 of the General Code, which is proper to consider in connection with your inquiry, provides:

"The parents, parent, guardian or other person or persons having the custody of a child, may enter into an agreement with any public, semi-public or private association or institution of this state established for the purposes of aiding, caring for or placing children in homes, and which has been approved and certified by the Division of Charities, Department of Public Welfare, placing such child in the temporary custody of such institution or association; or such parent, guardian or other person may make an agreement surrendering such child into the permanent custody of such association or institution, to be taken and cared for by such association or institution, or placed in a family home.

Such agreements provided for herein shall be in writing, on forms prescribed and furnished by the Division of Charities, Department of Public Welfare and may contain any and all proper and legal stipulations for proper care of the child, and may authorize the association or institution when such agreements are for permanent care and custody to appear in any proceeding, for the legal adoption of such child, and consent to its adoption, as provided in Section 8025 of the General Code. The adoption order of the judge made upon such consent shall be binding upon the child and its parents, guardian, or other person, as if such persons were personally in court and consented thereto, whether made party to the proceeding or not."

From the foregoing it will clearly appear that when an adoption proceedings is instituted in Ohio the institution which you describe would have ample power to consent under the Ohio law.

However, your question is not what authority there is to consent in an adoption proceeding under the Ohio law, but rather is what power does the institution which you mention have to consent to an adoption in a proceeding under the Pennsylvania law. While, of course, the jurisdiction for such proceeding in Pennsylvania will be governed entirely by the statutes of said state it is assumed that you are inquiring whether the power exists to grant said consent rather than requesting an interpretation of the Pennsylvania statutes to determine the results of said consent. While it is a general rule of construction that ordinarily officials in Ohio have no extra-territorial jurisdiction, and that adoption proceedings must be strictly followed, it must be kept in mind that there are other well defined rules of construction to the effect that the paramount interest of the child will be taken into consideration in connection with such proceedings. Section 1352-12, General Code, above mentioned, expressly provides that the agreement in surrendering such child may authorize the institution, when such agreements are made for permanent care and custody, to appear "in any proceeding for the legal adoption of such child, and consent to its adoption, as provided in Section 8025 of the General Code". It is believed that an analysis of the language of the section last above mentioned will disclose that there are two powers granted to such an institution if the contract of surrendering a child contains the provisions above mentioned. First, it is given power to appear and consent in any adoption proceedings and second, it is authorized to consent to the adoption provided for in Section 8025 of the General Code.

Keeping in mind that the child's welfare is paramount it will be observed that in many instances an adoption in another state may often serve the child's best interest. Running through all of the law with reference to unfortunate children there is a purpose to eventually find a home for them in a proper family when possible. Naturally persons who seek to adopt a child and thereby give it the power of inheri-

tance often may desire to have such a proceedings consummated within their own state wherein they are familiar with the effect of the same in view of the law, and the refusal of consent might be the means of depriving an unfortunate child of a real future opportunity.

In view of the foregoing, it is my opinion that under the provisions of Section 1352-12 of the General Code a child caring institution approved by the Division of Charities of the Department of Public Welfare of the State of Ohio, to which there has been surrendered a child under an agreement which authorizes such institution to consent to the adoption of the child, may consent to the adoption of said child in a proceeding for adoption instituted in a state other than Ohio if, in the judgment of the managers of said institution, such a procedure is for the welfare of the child. The effect of such consent, however, as to the ultimate legal status of the child, is, of course, a matter depending upon the provisions of the laws of the state in which such a proceeding is had.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1804.

AFFIDAVIT OF INSANITY—FILED AGAINST NON-RESIDENT OF COUNTY
—SANITY FINDING BY PROBATE COURT—COSTS NOT CHARGE-
ABLE TO PERSON'S COUNTY—COURT'S DETERMINATION OF RES-
IDENCE BINDING UPON OTHER OFFICIALS.

SYLLABUS:

1. *When an affidavit charging insanity is filed against a person, under the provisions of Section 1950-1 of the General Code, and upon hearing, the court finds such person not to be insane, the fees and costs incident to said hearing and determination may not be charged back against the county in which said person has a legal residence.*

2. *It is one of the duties of the Probate Court in conducting hearings in insanity cases to inquire into and determine the residence of the patient and such determination is binding upon other county officials.*

COLUMBUS, OHIO, April 22, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion upon the following:

“Section 1950-1 of the General Code provides for the commitment of an insane person, having a legal residence in the State of Ohio, but who may be temporarily residing or detained in a county other than that of his legal residence, may be legally committed to the state hospital by the probate judge of the county in which such person is temporarily residing or detained. It further provides that the regular Probate Court fee incident to commitment shall be charged against the county of his or her legal residence. In a former opinion of your department it was held that the proper method of procedure was to pay these fees out of the treasury of the county where the commitment was made and the fiscal officer of that county should recover the same from the county of the person's residence.

Question 1. When an affidavit of insanity is filed against a person and