Infant married women are prospective parents. When they become such, when their children become of compulsory school age the compulsory educational laws apply to them. Prior to the time the children reach compulsory school age the infant wife and mother finds the rearing of her offspring, under ordinary circumstances, too absorbing of her entire attention to permit her attending public school.

As before stated herein, marriage of an infant female releases her from the guardianship of her parents. They are no longer entitled to her services are required to support her,—that becomes the duty of her husband or of herself, as the case may be.

Answering your third question, in consideration of the law and the reasons herein stated, the conclusion is reached that compulsory school laws do not apply to compel an infant married female to attend school, although if she choose to do so, she may, until such time as she becomes twenty-one years of age, attend the schools of the district of which she is a resident, free.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2496.

CHILDREN—ADOPTION LAW—WRITTEN CONSENT REQUIRED BY CHILD SOUGHT TO BE ADOPTED IF MORE THAN THIRTEEN YEARS OF AGE—WHEN WRITTEN CONSENT OF NATURAL PARENTS NECESSARY—OHIO PROBATE COURT WITHOUT JURISDICTION TO ACT IN ADOPTION PROCEEDINGS WHERE PARTIES IN INTEREST ARE NON-RESIDENTS OF STATE—THREE SPECIFIC CASES PASSED UPON.

1. *Under the provisions of section* 8025 *amended by House Bill No.* 91, 109 *O. L.* 177, *in adoption proceedings, written consents are required by child sought to be adopted if more than thirteen years of age; also by parent awarded custody of child by divorce decree together with the court's approval of such parent's consent.*

2. *When the natural parents of children sought to be adopted, are living and under no legal disability to assume parental custody over the same, their written consent to the adoption proceedings is a necessary statutory requirement of section* 8025 *G. C.*

3. *An Ohio probate court is without jurisdiction to act in adoption proceedings where parties in interest are non-residents of the state of Ohio, and a former decree unrevoked of a court of another state has awarded the custody of said minor to a foster parent. Such court originally determining such matters has a continuing jurisdiction in the same.*

COLUMBUS, OHIO, October 24, 1921.

HON. HARRY G. GRAM, *Probate Judge, Springfield, Ohio.*

DEAR SIR:—Your letter of recent date has been received reading as follows:

> "I would like to have your opinion as to the following matters pertaining to the new adoption law:
>
> (1) A woman secured a divorce from her husband in Montgomery county, was awarded the custody of their minor child, subject to the

father's right to see the child once a month, provided he paid alimony, etc., which he has not done. The woman has since married and her second husband desires to adopt the boy, who is over thirteen. Must consent be given by the mother, the boy and also by the court granting the divorce and custody of the child?

(2) A child now four years of age was given into the care and custody of the father's parents when an infant. The parents of the child are now separated but not divorced. The grandparents desire to adopt child and the father will give consent but the mother will not. Can adoption be accomplished and how?

(3) An illegitimate child given by mother to a man and his wife about ten years ago in this county, who later moved to California. In 1918 these people legally adopted said child in superior court of San Diego county, California. The wife died and man married again. The real mother and the man she has married now desire to adopt the child and the foster father gives his consent in this court. Can there be any legal obstruction to such adoption?"

Adoption has been defined as the act by which the relation of paternity and affiliation are recognized as legally existing between persons not so related by nature.

In a strictly legal sense the act of adoption would seem to be an artificial relation, wholly statutory, and dependent alone upon the force of the legislative act creating it. It is therefore essential that the Ohio statutes relative to the adoption of infants be strictly construed in discussing the questions submitted by your inquiry.

Sections 8024, 8024-1 and 8025 G. C., as amended by House Bill No. 91, 109 O. L. provide as follows:

"Sec. 8024. Any proper person, or a husband and wife jointly, may petition the probate court of the county in which he or they have a legal settlement, of the county in which the child resides or of the county in which the child had a legal residence when it became a public charge, for leave to adopt a child and for a change of the name of such child. Such petition for adoption shall specify the name, age, and place of residence of the petitioner and of the child, and the name by which the child shall be known; whether such child is possessed of any property, and the full description of the property, if any; whether the child has one or both parents living; in case one or both are alive, then the name or names and place of residence of such father and mother shall be given unless proven to be unknown to the petitioner. Provided that if such child sought to be adopted is, by previous order of a juvenile court, under the legal guardianship and permanent custody of a state board or of an institution or agency certified by the board of state charities for the care of children, or has been legally surrendered to the guardianship of such institution or agency, then the names of parents shall be omitted from such petition, but the court shall cause such allegation and the petition to be verified."

"Sec. 8024-1. Upon the presentation of such petition the same shall be filed with the court and the said court shall appoint a day for the hearing of said petition and the examination, under oath, of the parties in interest, not less than ten nor more than thirty days from the filing of the petition. It shall be at the option of the court to ad-

journ the hearing of said petition or the examination of the parties in interest, from time to time, as the nature of the case may require. If it shall be necessary, under the provisions of this act, that a discreet and suitable person shall be appointed as next friend to the child sought to be adopted, the court shall make such appointment and shall thereupon assign a day for the hearing of said petition and examination of the parties in interest, not less than ten nor more than thirty days from the time of appointing the next friend. In case there is in the county an institution or agency approved by the board of state charities, such institution or agency may be designated as next friend, and consent be given as indicated in section 8025. Or the court may order the board of state charities through an authorized representative to act in such capacity. Such person, institution, agency or board thus designated shall proceed to verify the allegations of the petition, shall make appropriate inquiry to determine whether the proposed foster parents and their home are suitable for such child, and whether such child is a proper subject for adoption in such home. If such child is under the legal guardianship of a state board or of any certified institution or agency, no next friend shall be appointed, but such board, institution or agency shall prepare the report required by this section. As soon as practicable, there shall be submitted to the court a full report in writing, with a recommendation as to the proposed adoption and any other information concerning such child or the proposed home as the court may require. Upon the day so appointed, the court shall proceed to a full hearing of the petition and the examination of the parties in interest, under oath, with the right of adjourning the hearing and examination from time to time as the nature of the case may require. The board of state charities shall prepare and furnish to the probate court a suitable blank for use by persons designated to make the report required by this section."

"Sec. 8025. In any adoption proceedings written consents must be given to such adoption as follows:

(a) By the child sought to be adopted if more than thirteen years of age.

(b) By each of the living parents or by the mother of an illegitimate child, except as follows:

(c) By the parent or person awarded the legal custody and guardianship by a juvenile court because of dependency, or because of the mental, moral or other unfitness of one or both parents; provided that such juvenile court approves of such consent whereupon the jurisdiction of such court over such child shall cease.

(d) By the parent awarded custody of child by divorce decree, provided the court which granted such decree approves of such consent, and because of such approval the jurisdiction of such court over such child shall thereupon cease.

(e) By legal guardian of the person of such child, if parents are dead or their residence has been unknown for at least one year, or if the parents have, because of mental, moral or other unfitness, been deprived of legal custody and guardianship of such child by juvenile court; but if there is no guardian and such child is not the ward of a state board or of a certified institution or agency, a next friend shall be appointed as hereinbefore provided, to give consent.

(f) If the parent or parents having the legal custody give the custody of such child for the full term of its minority to any institu-

tion 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.

All such consents to such adoptions shall be acknowledged and witnessed."

It becomes obvious from an examination of the provisions of these statutes, that the written consent of the natural parents of the child sought to be adopted, is a necessary requirement of the statute; also it is apparent that in the absence of the written consents by the natural parents, provision is made for such written consents by those persons standing in such parental relation. Written consent is also required by the child sought to be adopted, when the age of such child or person is over thirteen. Applying such requisitory principles of the statutes, to the first question contained in your inquiry, it becomes evident that consent to such an adoption must be given by the boy mentioned, since the facts state that he is over thirteen years of age, and express provision is made for this event by sub-title (a) of section 8025 G. C. Sub-title (b) of the same section also provides that consent to such an adoption must also be given

"by each of the living parents or by the mother of an illegitimate child, except as follows:" etc.

Thus exception (d) squarely meets with the conditions of your inquiry and requires the written consent of the parent (in the present case the mother) awarded custody of the child by divorce decree, provided the court which granted such decree approves of such consent; and it is further provided by the same excepting clause that by reason of such approval the jurisdiction of such court over such child shall thereupon cease. It may be noted that the statute does not directly require the consent of the court in such an instance to the adoption, but does require the court's approval of the parent's consent to the same, which practically results in the end, however, to the same thing. It is thought, therefore, with the exception of this slight digression to the form of your first question, that the same obviously should be answered in the affirmative.

Considering question (2) of your inquiry, the same may be again quoted for convenience of reference, and is as follows:

"A child now four years of age was given into the care and custody of the father's parents when an infant. The parents of the child are now separated but not divorced. The grandparents desire to adopt the child and the father will give consent but the mother will not. Can adoption be accomplished and how?"

It may be noted generally that the condition of facts stated in your second question are essentially different from those prevailing in the first, which as an abstract proposition does not withhold the consent of any of the neces-

sary parties to the act of adoption, and acquiescently, therefore, comes within the provisions of section 8025 G. C. Such is not, however, the case when a similar application of these provisions is made to your second question. Quoting again from section 8025 G. C. the following language appears:

> "In any adoption proceedings written consents must be given to such adoption as follows: (b) *By each of the living parents,* or by the mother of an illegitimate child as follows:"

Then follows the four exceptions sub-titled c, d, e and f, and which provide for these conditions upon which persons other than *each of the living parents* are required to give written consents to such an adoption. It is observed in the case of your first question that the father has lost the parental custody and control over his child by reason of his transgression of the court's decree, which under the circumstances has awarded the same to the mother. Otherwise, under normal conditions, the father would stand in equal parental authority with the mother, and under such conditions would be considered *a living parent* whose consent would be necessary to the validity of an adoption under the provisions of this section. It is thought to be apparent therefore that the mother's refusal to give her consent to the adoption as stated by the facts of question (2) becomes a direct obstacle to the statutory requirements of section 8025 G. C. which requires the consent of *each of the living parents,* unless the facts or conditions of the given case come within the provisions of the exceptions noted.

The facts stated in your second question do not seem to be such as would come within the provisions of such exceptions. Moreover, it would appear in the present case that the mother in question is under no legal disability which would tend to bar her right to the natural custody of her child, nor does it appear that there has been any permanent relinquishment on her part of parental authority; rather, on the contrary, it would seem that her refusal to give such consent implies in itself an assertion on her part of the right of parental custody over the child in question.

It is a well settled principle of law that when the statute prescribes a particular mode of procedure, a substantial compliance therewith is essential to the validity of the same. It has been held in adoption proceedings similar to the one discussed that in the absence of legal disability, the consent of the natural parents to the same is essential.

> Smith vs. Allen, 161 N. Y. 478; 55 N. E. 1056;
> Bressner vs. Saarman, 112 Iowa, 720;
> In re Olson, 3 N. P. 305; 84 N. W. 920; 21 L. R. A. 380; 33 Pac., 460.
> See also Opinions of Attorney-General, 1918, Vol. 1, p. 121.

In view, therefore, of such considerations it is the department's opinion that such an adoption as is suggested by your second question may not be legally consummated without the written consent of the mother which is required by the provisions of section 8025 G. C. Your second question is accordingly answered in the negative.

Your third question re-stated is as follows:

> "An illegitimate child given by mother to a man and his wife about ten years ago in this county, who later moved to California. In 1918 these people legally adopted said child in Superior Court of San Diego county, California. The wife died and man married again. The real

mother and the man she has married now desire to adopt the child and the foster father gives his consent in this court. Can there be any legal obstruction to such adoption?"

The opening paragraph of section 8024 G. C. reads as follows:

"Any proper person, or a husband and wife, jointly, may petition the probate court of the county in which he or they have a legal settlement, of the county in which the child resides or of the county in which the child had a legal residence when it became a public charge, for leave to adopt a child and for a change of the name of such child."

It is not thought that the qualification herein stated contemplated any other than original adoption proceedings. That is to say, the statute does not in any sense intend to make provision for readoption or the replacement of one foster parent by another, or to authorize the probate court in such cases to re-determine facts or findings germane entirely to the original adoption proceedings held and decreed by other courts of competent jurisdiction in such matters. The facts stated in your third question aver that the child sought now to be adopted by such child's real mother and her husband subsequently married, is legally the adopted child of the present foster father by decree of the superior court of San Diego, California, by legal adoption proceedings held in that court in the year 1918. There are no facts stated in your communication tending to show an annulment or revocation of this decision of the California court, and in the absence of the same, it may only be presumed that such a decree of court is a present valid and existing judgment and a matter of record of said superior court of San Diego, California.

In 23 Cyc. the rule is laid down:

"A judgment rendered by a court having jurisdiction of the parties and the subject matter, unless revoked or annulled in some proper proceeding, is not open to contradiction or impeachment in respect to its validity, verity or binding effect by parties in any collateral action or proceeding."

In Marian Villier et al. vs. Ruth N. Watson, Kentucky court of appeals, it was held that a second adoption even though entered on the petition of the party to the first proceeding, when no attempt has been made to annul or set aside the first decree, does not affect rights of inheritance under the first adoption.

The courts of Ohio as well as a majority of the same of other states, have consistently held that in those cases where the courts have determined the question of the custodianship of minor children and have gained jurisdiction over such cases in a competent manner, said jurisdiction of the court is a continuing one and remains vested in the court as long as the age of the minor child requires said court's protection. In re Angeline Crist, 89 O. S., 33; Hoffman vs. Hoffman, 15 O. S. 427; Rogers vs. Rogers, 51 O. S., 1.

In addition to the statutory obstacles to the adoption proceedings contemplated in your third question, it would seem that the Ohio probate court in such an instance would be without jurisdiction to act in the same, since the domicile of the child sought to be adopted apparently is in California. Also the facts stated do not show any of the parties in interest to be residents of the state of Ohio, nor does it appear that the former California adoption proceedings have ever been annulled, vacated or revoked by any proper legal pro-

ceeding for that purpose consequently it is believed that said California court would still have a continuing jurisdiction over the ward of its original proceedings, and under the circumstances would be the proper court to determine the facts as to the best interests of the child, as well as those matters relative to a change of such minor's foster parents.

In specific answer to your third question it is therefore thought that such considerations as have been discussed would be legal obstacles, sufficient in themselves to affect the validity of the proposed adoption proceeding as stated in the third question of your inquiry.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2497.

PROBATION OFFICER—COUNTY ATTENDANCE OFFICER—COMPENSATION—HOW PAID—EXPENSES OF ATTENDANCE OFFICER PAID FROM COUNTY BOARD OF EDUCATION FUND—HOW COMPENSATION OF PROBATION OFFICER INCREASED OR DECREASED.

1. *A probation officer designated under section 7769-1 G. C. as a county attendance officer, cannot legally draw two compensations, that is, one for acting as probation officer and a separate salary as county attendance officer, for the reason that section 7769-1 does not provide a salary for the county attendance officer where such county attendance officer is also a probation officer of the juvenile court. Where a probation officer is designated as county attendance officer, only his expenses as attendance officer is to be paid from the county board of education fund, which is disbursed by the county board of education.*

2. *The compensation of a probation officer may be increased or decreased at any time by the appointing judge not to exceed the amounts appearing in section 1662 G. C., and such compensation is paid from the county treasury.*

COLUMBUS, OHIO, October 24, 1921.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent inquiry, requesting the opinion of this department upon the following statement of facts:

> "Section 7769-1 G. C. (109 O. L., 388,) specifically provides that with the consent and approval of the judge of the juvenile court, a probation officer of the court may be designated as the county attendance officer. In a certain county in this state the probation officer, who is receiving a salary of $75.00 per month, is designated as county attendance officer at a salary of $25.00 per month.
>
> Question 1. May such probation officer legally draw two compensations, one for acting as probation officer, and a separate salary as county attendance officer?
>
> Question 2. If such probation officer may legally receive separate