

general laws of this state, to remove, alter, repair, replace and construct new bridges over such rivers, creeks or water courses that have been or will be removed therefrom in the process of improvement under said Conservancy Act and appropriate money, levy taxes, borrow money, or issue bonds for such purposes."

Further sections of the act need not be quoted here. It is sufficient for present purposes to say that the remaining sections of the act are consistent with the first section in that they make no distinction whatever on the score of the location of a bridge as between state or county roads on the one hand and municipal streets on the other.

The Conservancy Act which you refer to as appearing in 104 O. L., p. 13, is the same as that described in above quoted section 1 as the act of February 5th, 1914. Moreover, your letter indicates that the entire conservancy district which you refer to is located within Hardin county; and you have stated on a personal call at this office that such is the fact.

It is very clear that said sections 2432-1 to 2432-4 do not deal with the question of bridge construction from the usual standpoint of whether the county or city is to carry out the work. Said sections are dealing with a special situation created by the doing of work in a conservancy district. Therefore, the terms of said sections 2432-1 et seq. are to be dealt with as being special in their nature and from the standpoint of the purpose of the act of which they are a part, as shown by the title of that act above quoted.

It is quite true that the tax levy for the provision of funds with which to erect bridges under sections 2432-1 et seq. is to be made on all the taxable property within the county, as is the case with the construction of bridges, in accordance with section 2421. That fact, however, cannot prevail against the fact as already stated that sections 2432-1 et seq. deal with a conservancy district. In the case at hand, the bridges on the city streets not forming part of a state or county road are within the conservancy district exactly as are those bridges on the streets which do form a part of a state or county road.

From the foregoing considerations it is the opinion of this department and you are accordingly advised that the terms of sections 2432-1 to 2432-4 are to be read as independent of and not subject to any limitation found in section 2421 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3228.

ADOPTION LAW—NEW YORK CHILD—SOCIETY FOR CARING AND PLACING OF CHILDREN PLACES CHILD WITH FAMILY RESIDING IN CLEVELAND, OHIO, WHICH FAMILY NOW DESIRES TO ADOPT SAID CHILD—PROCEDURE TO BE FOLLOWED.

A minor child is surrendered by its parents, non-residents of Ohio, to a society incorporated under the laws of New York for the purpose of caring for and placing children. Said New York society placed said child with a family residing in Cleveland, Ohio, which family now desires to adopt said child in accordance with the adoption laws of Ohio.

HELD:

1. *The department of public welfare, through the division of charities, may, under authority of section 1352-1 G. C., investigate and certify a child-caring organization incorporated under the laws of another state and desirous of placing children in private homes in the state of Ohio.*

2. *However, such non-Ohio organization, before placing children in Ohio, must first comply with the provisions of section 1677 G. C.*

3. *Under the provisions of section 8025 G. C., paragraph "f", said New York society can give the legal consent to the adoption in Ohio of said child, if and when said society has received the certificate mentioned in section 1352-1 G. C. and has fully complied with the provisions of section 1677 G. C.*

COLUMBUS, OHIO, June 16, 1922.

DR. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letters to this department containing facts which may be stated as follows: One V. K. W., an infant under thirteen years of age, was surrendered in the state of New York by its parents, non-residents of Ohio, to a New York society which has for its object the care and placing of children. Subsequently, said New York society placed said child with a family residing in Cleveland, Ohio, which family now desires to institute proceedings under the laws of Ohio for the purpose of adopting said child.

You desire to know

(1) Whether under the adoption laws of Ohio said New York society could give the necessary legal consent to the adoption of this child.

(2) Whether a "next friend" could be appointed to give the legal consent to the adoption of this child.

(3) Whether the division of charities, department of public welfare, could investigate and certify, as provided in section 1352-1 G. C., a child-caring organization incorporated under the laws of another state and desirous of placing children in private homes in the state of Ohio.

(4) Whether it would be necessary for said New York society to meet the requirements of section 1677 G. C.

It will be found convenient first to answer your third and fourth questions, as it is believed that the answer to these questions furnishes a helpful background in the consideration of your first question. Said third and fourth questions will be considered together.

Section 1352-1 G. C., to which your third question refers, says:

"Such board shall annually pass upon the fitness of every benevolent or correctional institution, corporation and association, public, semi-public or private as receives, or desires to receive and care for children, or places children in private homes. Annually at such times as the board shall direct, each such institution, corporation or association, shall make a report, showing its condition, management and competency, adequately to care for such children as are, or may be committed to it or admitted therein, the system of visitation employed for children placed in private homes, and such other facts as the board requires. When the board is satisfied as to the care given such children, and that the requirements of the statutes covering the management of such institutions are being complied with, it shall issue to the association a certificate to that effect, which

shall continue in force for one year, unless sooner revoked by the board. No child shall be committed by the juvenile court to an association or institution which has not such certificate unrevoked and received within fifteen months next preceding the commitment. A list of such certified institutions shall be sent by the board of state charities, at least annually, to all courts acting as juvenile courts and to all associations and institutions so approved. Any person who receives children or receives or solicits money on behalf of such an institution, corporation or association, not so certified, or whose certificate has been revoked, shall be guilty of a misdemeanor, and fined not less than \$5.00 nor more than \$500.00."

The "board" spoken of in this section is the board of state charities. This agency was abolished by the 1921 administrative code (see section 154-26, 109 O. L. 111), the powers and duties of said board being transferred to the department of public welfare (section 154-57). The last named department carries on the work of the former board of state charities through a departmental division created under authority of section 154-48 G. C. and known as the "division of charities".

Section 1352-6 G. C., part of the same chapter in which section 1352-1 G. C. appears, says:

"For the purpose of this chapter the words 'institution' and 'association' shall include any incorporated or unincorporated organization, society, association or agency, public or private, which may receive or care for children; any individual who, for hire, gain, or reward, receives or cares for children, unless he is related to them by blood or marriage; and also any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 1352-1, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the duly appointed guardian thereof."

There appears to be nothing in either section 1352-1 G. C. or section 1352-6 G. C. which indicates an intention on the part of the legislature to proscribe a child-caring institution merely because it is not an *Ohio* institution. On the contrary, the main purpose of these sections seems to be to provide an "approved list" of institutions having adequate facilities for child care and placement, and to make sure that none but agencies which have passed the scrutiny of the state, receive commitments from the juvenile courts.

It is also significant that prior to the enactment of section 1352-1 G. C., the policy had been to permit non-Ohio associations to place children in this state. See 99 O. L. 201. Furthermore, this policy was sanctioned and continued by the same act which contains section 1352-1 G. C., as will be seen from the provisions of section 1677 G. C., found in 103 O. L. 877. The section last referred to says:

"Sec. 1677. No association of another state, incorporated or otherwise, shall place a child in a family home within the boundaries of this state, either with or without indenture or for adoption, unless such association shall have furnished the board of state charities with such guaranty as it may require that no child having a contagious disease, deformity, feeble mind or vicious character, shall be brought into this state by such association or its agents, and that such association will promptly receive and remove from the state, a child brought into the state by its agents, which shall become a public charge, within the period of five years thereafter."

In our view section 1352-1 G. C. and section 1677 G. C. are entirely consistent with each other. Read together, said sections mean that the department of public welfare, through the division of charities, has authority to investigate and pass upon the fitness of a non-Ohio institution, incorporated or otherwise, which receives and cares for children in Ohio, or which receives children outside of Ohio and places them in private homes within Ohio; that a non-Ohio association, before it can make legal placement of a child in Ohio must have the certificate spoken of in section 1352-1 G. C. and must also furnish the bond or guaranty required by section 1677 G. C.

Your third and fourth questions are therefore answered in the affirmative.

Your first question may now be considered.

The procedure for the adoption of children in Ohio is that set forth by section 8024 G. C. et seq., as amended in 109 O. L. 177.

The first of these sections, section 8024 G. C., indicates who may petition for adoption, and prescribes the contents of the petition.

The next section, section 8024-1 G. C., provides for a hearing on the petition, and also for the appointment of a "next friend" to the child, whose duty it is to make a written report to the court concerning the advisability of the proposed adoption.

Section 8025 G. C. relates to the matter of consent to the adoption, and says:

"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 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.

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

It is evident from paragraph (b) of the above section that the general rule is that written consents to the adoption of a child must be given by each of the living parents of a legitimate child, or by the mother of an illegitimate child. To this general rule there are exceptions, to-wit those found in paragraphs (c), (d), (e) and (f). That is to say, the written consent of each of the parents of a legitimate child, or the consent of the mother of an illegitimate child, may be dispensed with in the situations recognized by the paragraphs just referred to.

One of these paragraphs, to-wit "f", says:

"(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 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."

If the legislature in using the words

"any institution or agency *established under the laws of the state*"

had in mind not only institutions or agencies organized in Ohio, but also non-Ohio institutions or agencies which have applied for and have received the certificate of approval referred to in section 1352-1 G. C. and have complied with section 1677 G. C., it is clear that such non-Ohio institution or agency may give the legal consent to the adoption of a child, required by section 8025 G. C.

Inasmuch as the placing of children in foster homes and the adoption of children by foster parents are subjects intimately related to each other both in theory and in practice, it is clear that section 1352-1 G. C., section 1677 G. C. and section 8024 G. C. et seq. are in *pari materia*, and should be considered together with a view of harmonizing the same.

So construed, it is believed that the word "established" in the connection just referred to, to-wit in paragraph "f" of section 8025 G. C., should be given the broader meaning above suggested, and it is therefore our view that the New York society mentioned in your letter may give the necessary legal consent to the adoption of the said V. K. W., if and when said society has received the certificate mentioned in section 1352-1 G. C. and has fully complied with the provisions of section 1677.

In view of the nature of the answer given to your first question, it becomes unnecessary to consider your second question, which is whether a "next friend" could be appointed to give the legal consent to the adoption of the child in question.

It may also be pointed out that a non-Ohio institution or agency which obtains the certificate mentioned in section 1352-1 G. C. would also be "an institution or agency certified by the board of state charities * * * ", within the meaning of section 8024 G. C., 109 O. L. 177. And if the further fact in any given case is that the child whose adoption in Ohio is desired has been legally surrendered to the guardianship of such non-Ohio institution or agency, the person petitioning for the adoption would have the right under section 8024 G. C. to omit from the petition the names of the natural parents of said child.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3229.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
 SANDUSKY, MUSKINGUM, DARKE, TRUMBULL, HAMILTON AND
 HANCOCK COUNTIES.

COLUMBUS, OHIO, June 16, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

3230.

TAXES AND TAXATION—TOWNSHIP TRUSTEES MAY NOT BIND
 TOWNSHIP BY LEVY UNDER SECTION 1222 G. C. FOR ANY
 LONGER PERIOD THAN ONE TAXING YEAR—EXCEPTION—HOW
 FUNDS ACCRUING FROM LEVY UNDER SECTION 1222 G. C. MAY
 BE USED.

1. *A board of township trustees may not, except when bonds are issued under section 1223 G. C. bind the township by a levy under section 1222 G. C. for any longer period than one taxing year.*
2. *Funds accruing from a levy made by township trustees under section 1222 G. C. may not be used when the township trustees themselves propose to do a part of the work of improving an inter-county highway or main market road by original construction, leaving the remainder of the improvement to be done by the state, or by the state and county in co-operation.*

COLUMBUS, OHIO, June 17, 1922.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"I would appreciate your opinion upon the following questions under section 1222 General Code of Ohio:

1. The section provides that for the purpose of providing a 'fund' the tax may be put on, and the following section 1223 General Code seems to indicate that the trustees are authorized to issue bonds to mature in