

OPINION 65-24**Syllabus:**

1. The executive secretary to a county child welfare board cannot execute or acknowledge or certify the written consent to adoption required of a county child welfare board under Section 3107.06, Revised Code.

2. The consent to adoption of a county child welfare board required under Section 3107.06, Revised Code, can be given by a majority of a quorum of the board as determined under Section 5153.09, Revised Code.

To: Forrest P. Moore, Hocking County Pros. Atty., Logan, Ohio
By: William B. Saxbe, Attorney General, February 10, 1965

I am in receipt of your request for my opinion which provides in material part:

"Can the Executive Secretary of the Child Welfare Board, under the provisions of Section 3107.06 of the Revised Code of Ohio, sign the needed consent in adoption proceedings, or must the consent be signed by the entire membership of the Board?"

Section 3107.06, provides in pertinent part:

"No final decree or interlocutory order of adoption shall be entered by the probate court unless there is filed with the court written consents to the adoption, verified or acknowledged by the following:

"(D) By any division, county department or board, certified organization, or a person or persons having the permanent custody of the child. * * *"

Section 5153.07, Revised Code, provides that the board of county commissioners shall, in certain circumstances, create a county child welfare board. Without going into unnecessary detail, I would point out that one of the functions of the board

is to accept the permanent custody of children committed to it by or with the consent of a juvenile court.

The powers and duties of the executive secretary to a county child welfare board are set forth in Section 5153.11, Revised Code. Significantly, this section stipulates in part:

"The executive secretary shall administer the work of the county child welfare board or county department of welfare, subject to the rules and regulations of such board or department. With the approval of the board or department, such secretary shall appoint all other employees except the superintendent of any institution maintained by the board or department. Such superintendent shall appoint all employees in any such institution.

"Upon the advice of one or more reputable practicing physicians, the executive secretary may consent to such medical, dental, and surgical care, including surgery and the administration of anesthetics, inoculations, and immunizations, or other care as appears to be necessary for any child who is a ward of such board or department. The executive secretary may also consent to the enlistment of such ward into the armed forces of the United States."

It will be noted that Section 5153.11, supra, does not authorize the executive secretary to consent to an adoption -- in contrast to some other actions -- nor does this section or any other authorize the secretary to act in behalf of the board in this matter.

Further, it appears that Section 3107.06, supra, requires more than evidence of consent or a certification (by the secretary or the chairman for instance) that board consent has been given. It requires that the actual act of consent be presented in writing either acknowledged or verified by the board. In the absence of specific authority (see for example Section 2309.46, Revised Code) I must further conclude that the acknowledgment or verification may not be by an officer or agent but must be by those members of the child welfare board who took the action of consent i.e. through whom the board acted.

I am aware of the decisions in Tisone v. Board of Liquor Control, 1 Ohio App. (2d) 126 (1964) and The Ohio Real Estate Commission v. Evans, 119 Ohio App. 1 (1962), on the question of whether a secretary or a clerk of an agency can act for the agency under Section 119.12, Revised Code, which requires that an agency prepare and certify to the court a complete record of the proceedings in a case appealed to the court. The cases are in apparent conflict; the Evans case holding that the secretary to the Real Estate Commission cannot act for the agency under Section 119.12, Revised Code, and the later Tisone case holding that the clerk of the Board of Liquor Control can make the certification of a complete record. Without, however, attempting to resolve these two decisions or to determine which is based on the more persuasive reasoning, I conclude that there is sufficient differ-

ence in the subjects of Sections 119.12 and 3107.06, Revised Code, and in the statutory language, to distinguish the question raised here.

You have also inquired as to whether the "entire membership of the board" must sign the needed consent. Since Section 5153.09, Revised Code, specifically provides that three members of the board shall constitute a quorum and that the action of a majority of the members present shall constitute the action of the board, I am of the opinion that the consent may be executed by two members, if this be a majority of the quorum, or any greater number.

In specific answer to your questions, therefore, I am of the opinion that:

1. The executive secretary to a county child welfare board cannot execute or acknowledge or certify the written consent to adoption required of a county child welfare board under Section 3107.06, Revised Code.

2. The consent to adoption of a county child welfare board required under Section 3107.06, Revised Code, can be given by a majority of a quorum of the board as determined under Section 5153.09, Revised Code.