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1. CHILD UNDER TWO YEARS OF AGE—MOTHER MAY PLACE SUCH CHILD IN PERMANENT CUSTODY OF ANY ASSOCIATION OR INSTITUTION CERTIFIED AS QUALIFIED FOR CARE AND PLACEMENT OF CHILDREN—MAY BY WRITTEN AGREEMENT AUTHORIZE SUCH ASSOCIATION OR INSTITUTION TO CONSENT TO ADOPTION OF SUCH CHILD—MOTHER NOT REQUIRED TO OBTAIN CONSENT OF DIVISION OF SOCIAL ADMINISTRATION OF DEPARTMENT OF PUBLIC WELFARE OR COMMITMENT OF JUVENILE COURT—SECTIONS 1352-1, 1352-12, 1352-13 G. C.
2. STATUS WHERE NO CERTIFIED OR WRITTEN STATEMENTS OF QUALIFICATION ISSUED—CHILD MAY BE PLACED TEMPORARILY WITH PERSONS RELATED BY BLOOD OR MARRIAGE OR IN LEGALLY LICENSED BOARDING HOME—FREE FOSTER HOME—LEGAL ADOPTION.
3. "PERSON"—WORD CONSTRUED TO HAVE MEANING ORDINARILY GIVEN, TO WIT, "HUMAN BEING"—SECTION 10512-11, PARAGRAPH i, G. C.

**SYLLABUS:**

1. Under the provisions of Sections 1352-12 and 1352-13, of the General Code, the mother of a child under two years of age may, without obtaining consent of the division of social administration of the department of public welfare or a commitment of a juvenile court, place such child in the permanent custody of any association or institution which has been certified as qualified for care and placement of children under the provisions of Section 1352-1 and may by written agreement authorize such association or institution to consent to the adoption of such child. Such mother may not, however, place such child in the custody of any person, association or institution not so certified either for temporary or permanent custody without the written consent of the division of social administration; provided, however, that such child may without such written consent or court commitment be placed temporarily with persons related by blood or marriage or in a legally licensed boarding home, which is not established for the purpose of placing children in free foster homes or for legal adoption.

2. The word "person" as used in paragraph (i) of Section 10512-11, General Code, is to be construed as having the meaning ordinarily given that word, to wit, a "human being."

Columbus, Ohio, February 29, 1944

Hon. H. Lloyd Jones, Prosecuting Attorney  
Delaware, Ohio

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, such request reading as follows:

“Under the new adoption procedure, Section 10512-9 et seq. may a mother place a child under 2 years of age in the custody of persons for adoption without the written consent of the division of charities or by commitment from a juvenile court as required by Section 1352-13, General Code?”

Under the adoption code a ‘child’ is defined as any person under 21 years of age.

In paragraph (i) under Section 10512-11 it is contemplated that a ‘person’ may place a ‘child’ in a home for adoption.

What is meant by the word ‘person’ in said section?”

The answer to your question involves a consideration of the provisions of Section 1352-1 et seq. of the General Code, relating to the examination and certification of institutions which are authorized to receive the custody of children and to place them in private homes, and under certain circumstances to consent to their adoption. Your inquiry also involves a consideration of those provisions of the law which are embodied in what is now styled the “Adoption Code”, comprising Sections 10512-9 to 10512-23, inclusive, General Code. These statutory provisions are closely related. The Adoption Code takes the place in a general way, of former Sections 8024 to 8030-3, inclusive, of the General Code, which were repealed in 114 O. L., p. 320, when the forerunner of the present Adoption Code was enacted.

Section 1352-1 provides for an examination annually by the board of state charities, (now succeeded as to that duty by the division of social administration of the department of public welfare) of every benevolent or correctional institution, corporation and association, public, semi-public or private which receives, or desires to receive and care for children, or places children in private homes. When so certified, such institutions have certain powers in connection with the adoption of children to which I shall later call attention.

Section 1352-12, General Code, reads as follows:

“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 purpose 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.”

It will be observed that the above section which, standing alone, relates to the custody of any child, regardless of its age, provides in terms that the agreement by the parent may authorize the approved and certified association or institution to whose custody the child is committed *to consent to its adoption*, “*as provided in Section 8025 of the General Code*”, and further provides that when an adoption is made upon such consent, it shall be binding upon the parents as if they were personally present in court and consented thereto.

Section 8025, General Code as then in force read:

“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."

That section was, however, repealed by an Act passed in 1932, found in 114 O. L., p. 320. The substance of Section 8025 and its related sections was embodied in the new act which in turn has been amended, and now appears as Sections 10512-9 to 10512-23, General Code, entitled "Adoption Code." It seems clear to me that in repealing Section 8025 the legislature did not in any way change the effect of the provision in Section 1352-12, General Code authorizing the institution having the legal custody of the child to consent to its adoption under the statute which succeeded the repealed section, when it has been expressly authorized by the parent to do so.

Section 10512-14, General Code provides as follows:

"No final decree or interlocutory order of adoption shall be entered by the court unless there shall be filed with the court written consents to the adoption, witnessed and acknowledged, as follows:

- (1) By the child if over twelve years of age.
- (2) By each of the living parents, adult or minor, except as follows:

(a) The mother of an illegitimate child shall be considered for purposes of this section to be the sole parent and may give such consent alone, in which case the consent shall state that it is given by the mother by virtue of the fact that she is the sole parent.

(b) The consent of the parent shall not be required if the child is in the permanent custody of the division, a county department or a certified organization, or if such parent's place of residence is unknown and cannot with reasonable diligence be ascertained, or if such parent has been adjudged incompetent by reason of mental disability, provided, however, that the court shall have appointed a guardian ad litem for such parent who has been adjudged incompetent by reason of mental disability. The court may allow such guardian ad litem a reasonable fee for his services which shall be taxed as a part of the costs of the proceeding to be paid by the petitioner.

(c) If it is alleged in the petition that one or both of the parents have wilfully neglected the child for a period of more than two years, immediately preceding the filing of the petition, the court shall, upon application of the petitioner certify a copy of the petition to the juvenile court of the county where the child is residing; thereupon the juvenile court after due notice to such parent or parents and hearing shall determine the facts as to such neglect and shall certify a copy of its finding to the probate court wherein the petition was filed. The consent of a parent so found by the juvenile court to have wilfully neglected the child for such period shall not be required.

(3) If a guardian of the person of the child has been appointed and is acting as such, then by such guardian.

(4) If the child is in the permanent custody of the division, a county department or a *certified organization*, then by the division or such department or organization.

Such consents shall be applicable only to the specific adoption proposed by the petition. *Such consents may not be withdrawn after the entry of an interlocutory order of adoption.*

No final decree or interlocutory order of adoption shall be entered with respect to any child in the custody of the juvenile court or concerning whose custody or disposition proceedings are pending in such court until such custody or proceedings have been suspended or terminated by or in such court.

The consent of any parent awarded custody by a court of this state shall be subject to the approval of such court, and upon the filing in the adoption proceedings of the consent of such parent so approved the jurisdiction of such court over such child shall terminate."

(Emphasis added.)

That section is obviously the direct successor of Section 8025, and read in connection with Section 1352-12 General Code, contemplates that when

the permanent custody of a child has been surrendered to a "certified organization", then the consent of the parents to adoption need not be obtained.

I come now to a consideration of Section 1352-13, General Code, which appears to form an exception to the provisions of Section 1352-12, which I have already quoted. Section 1352-13 reads as follows:

"No child under two years of age shall be given into the temporary or permanent custody of any person, association or institution which is not certified by the division of charities, department of public welfare, as provided in Sections 1352-1 and 1352-6 of the General Code, without the written consent of the division of charities or by a commitment of a juvenile court. Provided such child may be placed temporarily without such written consent or court commitment with persons related by blood or marriage, or in a legally licensed boarding home which is not established for the purpose of placing children in free foster homes or for legal adoption. Persons, associations and institutions duly certified and licensed under Sections 1352-1 and 1352-6 for the purpose of placing children in free foster homes or for legal adoption, shall keep a record of such temporary and permanent surrenders of children under two years of age. This record shall be available for separate statistics, which shall include a copy of an official birth certificate and all information concerning the social, mental and medical history of such children which will aid in an intelligent disposition of them in case that becomes necessary because the parents or guardians fail or are unable to reassume custody. No child placed on a temporary surrender with an association or institution shall be placed in a free foster home or for legal adoption, and all such surrendered children who are placed in foster homes or for adoption must have been permanently surrendered and a copy of such permanent surrender must be a part of the separate record kept by the association or institution."

It will be observed that while this section expressly provides that no child under two years of age shall be given into temporary or permanent custody of any person, association or institution which is not certified by the division of charities, without the written consent of the division of charities or commitment by a juvenile court, yet, this prohibition does not carry with it any penalty and manifestly there is nothing in the statute that would prevent a mother from placing her child under two years of age with anyone to whom she saw fit to commit its care and custody. The only penalty would be to invoke the jurisdiction of the juvenile court over the child as a "neglected or dependent child", if the facts warranted.

The effect of these two sections read in connection with the Adoption Code is this: Section 1352-12, General Code gives permission to a parent to give to a certified institution the permanent custody of his child and to authorize it by writing, to give consent to any proposed adoption of the child, in which case the parent's consent need not be obtained. Nothing in that section limits the right of a parent to give the custody of his child generally to any person or organization he may see fit. But Section 1352-13, General Code introduces an exception as to a child under two years of age. The parent is forbidden to place such child either temporarily or permanently with any person, institution or association not certified under Section 1352-1, except by the written consent of the division of social administration of the department of public welfare or pursuant to a commitment by a juvenile court. Certain exceptions are specified as to temporary placement.

It appears to follow from a reading of these sections that even when the child is under two years of age the parent may, without securing the consent of the division of social administration, give the permanent custody of his child to any certified institution, and may authorize it as provided in Section 1352-12, to give a binding consent to the child's legal adoption. It would also follow that when the division of social administration has given its consent to placing such child under two years of age with some person or institution who is not so certified, such institution would have no authority even though expressly conferred by the parent, to give a legal consent in lieu of the parent to the adoption of the child.

It may not be essential to the conclusion I have reached, but it is perhaps pertinent to this discussion, to note that the courts do not appear to regard the agreement of a parent as to either temporary or permanent custody of a child as constituting an irrevocable contract on the part of the parent. Nor do they regard the consent of the parent to the adoption of the child as being beyond his right of revocation up to the time of the order of adoption. In the case of *State ex rel. v. Scholder*, 22 O. L. R. p. 608, decided by the Court of Appeals of Summit County, it was held:

"1. Where a proceeding for adoption of a child is by petition under General Code, Section 8024, and the facts are such that the written consent of the mother is necessary, the probate court is without power to decree an adoption unless the

mother at the time of the decree consents in writing to such adoption.

2. In such a case, the mother, whose written consent has been filed, may revoke and withdraw such consent at any time before the judgment or decree of adoption has been made."

Washburn, J. said at page 610 of the opinion:

"Where, under the statutes, there is no reason why a mother should be deprived of her child, the court is absolutely without power to take the child from her, unless she consents thereto — that would be so even if there was no statute to that effect; that consent she may give or withhold at her pleasure; it is her right by nature and by law, and the court cannot deprive her of it; she may withhold her consent until just before the order is made, and we can think of no good reason why she may not withdraw her consent at any time before the court acts upon such consent."

To the same effect, *In re. Rubin*, 19 O. O., 463. This conclusion is strengthened by a sentence which was introduced into Section 10512-14 by the 95th General Assembly: "Such consents may not be withdrawn after the entry of the interlocutory order of adoption." The inference is plain that they may be withdrawn prior thereto.

Relative to the agreement on the part of a parent for the permanent custody of a child, it was held by the Court of Appeals of Stark County in *French v. Catholic Community League*, 69 Oh. App., 442, as follows:

"The mother of an illegitimate child, after having surrendered it into the permanent custody of another, under authority of Section 1352-12, General Code, may withdraw such consent before such other person has moved to place the care and custody of the child in the hands of another by adoption."

You have raised the question as to the meaning of the word "person" as used in Section 10512-11, General Code. This section prescribes what the petition for adoption shall contain. Without quoting the entire section it is sufficient to say that its evident purpose is to give the court all the facts that go to make up the background of the child, together with some information as to the petitioners. The paragraph to which you refer reads:

"(i) If the child is living in the home of the petitioner,



the name of the person, county, department, organization or division who placed the child in such home and the date of placement; when the child enters the home of the petitioner after the filing of the petition (,) such information respecting the placement shall forthwith be furnished to the court by a supplemental petition.

A certified copy of the child's birth certificate shall be filed with the petition if one is obtainable."

I cannot see that any technical or special meaning is to be ascribed to the word "person". In my opinion, it has its simple dictionary meaning, which is too familiar to require elaboration. The paragraph in question only aims to inform the court as to the circumstances under which the child came into the home of the petitioner.

Specifically answering your questions, it is my opinion:

1. Under the provisions of Sections 1352-12 and 1352-13, of the General Code, the mother of a child under two years of age may, without obtaining the consent of the division of social administration of the department of public welfare or a commitment of a juvenile court, place such child in the permanent custody of any association or institution which has been certified as qualified for care and placement of children under the provisions of Section 1352-1 and may by written agreement authorize such association or institution to consent to the adoption of such child. Such mother may not, however, place such child in the custody of any person, association or institution not so certified either for temporary or permanent custody without the written consent of the division of social administration; provided, however, that such child may without such written consent or court commitment be placed temporarily with persons related by blood or marriage or in a legally licensed boarding home, which is not established for the purpose of placing children in free foster homes or for legal adoption.

2. The word "person" as used in paragraph (i) of Section 10512-11, General Code, is to be construed as having the meaning ordinarily given that word, to wit, a "human being."

Respectfully,

THOMAS J. HERBERT  
Attorney General