

**OPINION NO. 82-065****Syllabus:**

1. The Department of Public Welfare need not certify, in accordance with R.C. 5103.03, groups or individuals that provide support services to placement agencies but that do not themselves receive or care for children or place children in private homes.
2. The Department of Public Welfare may adopt such rules as, in its judgment, are necessary for the adequate and competent management of individuals who provide support services to placement agencies but who do not themselves care for children or place children in private homes.

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**To: Kenneth B. Creasy, Director, Department of Public Welfare, Columbus, Ohio**  
**By: William J. Brown, Attorney General, September 28, 1982**

I have before me your request for my opinion concerning the responsibility of the Department of Public Welfare (DPW) to regulate or license persons or groups which offer certain services to agencies which hold custody of children for the

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purpose of placing them for foster care or adoption. You state in your letter that "[s]uch [persons or] groups merely seek to provide support services to placement agencies under contract, including the recruitment of private homes and social studies of them in regard to the placement of specific children."

The duty of DPW to license or regulate persons or groups which care for or place children in private homes is set forth in R.C. 5103.03. That section reads, in pertinent part, as follows:

The department of public welfare shall make such rules as are necessary for the adequate and competent management of institutions or associations as defined in section 5103.02 of the Revised Code. Except for those institutions under the control of the department of youth services, places of detention for children established and maintained pursuant to sections 2151.34 to 2151.3415 of the Revised Code, and child day-care centers subject to Chapter 5104. of the Revised Code, the department of public welfare shall annually pass upon the fitness of every benevolent or correctional institution, corporation, and association, public or private, that receives, or desires to receive and care for children, or places children in private homes. Annually, at such times as the department of public welfare directs, 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 received for care or service, the system of visitation employed for children placed in private homes, and such other facts as the department of public welfare requires.

When the department of public welfare is satisfied as to the care given such children, and that the requirements of the statutes and regulations covering the management of such institutions, corporations, and associations are being complied with, it shall issue to the institution, corporation, or association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the department. (Emphasis added.)

R.C. 5103.02 defines "institution" and "association" to include:

[A]ny incorporated or unincorporated organization, society, association, or agency, public or private, which receives or cares for children for two or more consecutive weeks; any individual who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless he is related to them by blood or marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, 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 appointed guardian of such children; provided, that any organization, society, association, school, agency, child guidance center, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the department of youth services, the department of mental health, or the department of mental retardation and developmental disabilities, or any individual who provides care for only a single-family group, placed there by their parents or other relative having custody, shall not be considered as being within the purview of these sections.

Thus, pursuant to R.C. 5103.02 and R.C. 5103.03 DPW may adopt such rules as are necessary for the adequate and competent management of the following entities:

1. any private or public organization which receives or cares for children for two or more consecutive weeks;
2. any individual, not related to the children by blood or marriage,

who, for profit, receives or cares for children for two or more consecutive weeks;

3. any individual, not in the employ of a court or of an institution or association certified under R.C. 5103.03, who in any manner becomes a party to the placing of children in private homes.

However, the duty of the DPW to certify such entities pursuant to R.C. 5103.03 extends only to organizations which receive or care for children or place children in private homes.

It is my understanding, based on information furnished by your office, that the persons and groups in question do not have custody of or provide care for children and that they do not participate in the act of placing children in foster homes. Rather, through the recruitment and study of private homes, they provide information which the licensed agency may utilize in making placement decisions. Thus, these entities are exempt from certification by DPW, since only those organizations which receive or care for children or place children in private homes must be certified by DPW. I conclude, therefore, that DPW has no authority to certify individuals or groups, such as those described in your letter, which do not care for children or place children in private homes.

The analysis concerning the duty of DPW to adopt rules governing the individuals and groups in question, however, is slightly more complex. As was previously discussed, DPW is to adopt such rules as are necessary for the adequate and competent management of the three types of entities listed in R.C. 5103.02. The first two categories described therein are comprised of individuals and groups that receive or care for children for two or more consecutive weeks. The persons and groups described in your letter clearly do not fall within either of these categories. The remaining category refers to individuals, not in the employ of a court or an organization certified under R.C. 5103.03, who in any manner become a party to the placing of children in private homes. It is my understanding that the individuals in question are not employed by a court or an organization certified pursuant to R.C. 5103.03. The only remaining question, therefore, becomes whether the department must adopt rules governing individuals who do not actually place children but who recruit or perform social studies of private homes in which children may be placed.

I note that R.C. 5103.02 refers to an individual who "in any manner becomes a party to the placing of children in foster homes." The legislative intent, therefore, appears to encompass individuals in addition to those who have custody of the child or who seek to provide foster care. The common meaning of the term "party" includes "a person who participates or is concerned in an action, proceeding, plan. . . ." Webster's New World Dictionary 1037 (2d college ed. 1976). An individual who recruits or makes studies of private homes, or otherwise provides support services, with regard to the placement of children is in some manner participating in the placement proceeding. Thus, pursuant to R.C. 5103.03, the department has the authority to establish such rules as are necessary for the adequate and competent management of individuals who assist in placing children in private homes by providing support services, such as recruiting and investigating potential homes, to placement agencies.

The duty of DPW to adopt rules governing certain groups and individuals is, however, a qualified duty. Only those rules which are necessary for the adequate and competent management of the particular entity are required. It is, of course, within the discretion of the department to determine that no rules are necessary for the adequate and competent management of individuals who merely provide certain support services to placement agencies.

Therefore, it is my opinion, and you are advised, that:

1. The Department of Public Welfare need not certify, in accordance with R.C. 5103.03, groups or individuals that provide support services to placement agencies but that do not

themselves receive or care for children or place children in private homes.

2. The Department of Public Welfare may adopt such rules as, in its judgment, are necessary for the adequate and competent management of individuals who provide support services to placement agencies but who do not themselves care for children or place children in private homes.