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FELON, CONVICTED — SERVING SENTENCE IN OHIO PENAL INSTITUTION — LEGALLY COMPETENT TO AGREE TO SURRENDER HIS OR HER CHILD FOR PERMANENT PLACEMENT OR GUARDIANSHIP — SECTION 1352-12 GENERAL CODE.

SYLLABUS:

A convicted felon serving sentence in an Ohio penal institution is legally competent to enter into an agreement surrendering his or her child for permanent placement or guardianship under the provisions of Section 1352-12, General Code.

Columbus, Ohio, December 13, 1941.

Hon. Charles L. Sherwood, Director,
Department of Public Welfare, Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 1352-12 G. C. 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 purposes 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." (110 v. 265. Eff. July 23, 1923.)

Query: Is a person convicted of a felony and serving a sentence in a reformatory or penal institution legally competent to enter into an agreement surrendering his or her child for permanent placement or guardianship?"

With reference to the status of prisoners, the maxim of *civiliter mortuus* has never been accepted as law in this state. In Ohio prisoners have all rights which have not been taken away by statute. *Frazer v. Fulcher*, 17 Ohio 260; *Thomas v. Mills*, 117 O.S. 114.

The instances of statutory attainr are necessarily limited in view of Article I, Section 12 of the Ohio Constitution, which provides that "no conviction shall work corruption of blood, or forfeiture of estate".

Statutory forfeitures not classed as forfeitures of estate include the following: the right to serve as an election officer; the right to be an elector or juror, or to hold an office of honor, trust or profit; the right to be licensed to engage in certain businesses upon conviction of certain offenses.

The foregoing statutory forfeitures being in derogation of natural rights and privileges must be strictly construed. No inference can be drawn therefrom creating a limitation on or the destruction of contractual capacity except where such contractual capacity is dependent upon the acquisition of a license to engage in certain enumerated businesses or in connection with the holding of offices of honor, trust or profit.

It is my opinion, therefore, that a convicted felon serving sentence in an Ohio penal institution is legally competent to enter into an agreement surrendering his or her child for permanent placement or guardianship under the provisions of Section 1352-12, General Code.

Respectfully,

THOMAS J. HERBERT,

Attorney General.