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RECORDS OF ADOPTION CASES TO BE SEPARATELY KEPT
—§§3107.14, 2101.12, R.C.

SYLLABUS:

Proceedings in adoption cases should be separately recorded in a book kept for that purpose and separately indexed, in accordance with the provisions of Section 3107.14, Revised Code, and should not be journalized or generally recorded as provided by Section 2101.12, paragraphs (E) and (G), Revised Code.

Columbus, Ohio, July 9, 1959

Hon. Ray W. Davis, Prosecuting Attorney
Pickaway County, Circleville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“It is requested by the Probate Judge of this County that I obtain an opinion from the Attorney General on the following question, which has given some cause of concern in the Probate Court.

“The question is: The necessity of entering the entry or order of adoption in the Journal of the Probate Court, which journal is open to public inspection and is public record.

“R.C. 2101.12, sub-section E provides as follows: “A journal, in which shall be kept minutes of official business transacted in the probate court, or by the probate judge, in civil actions

and proceedings.’—(G) ‘A final record, which shall contain a complete record in each cause or matter of the petitions, answers, demurrers, motions, returns, reports, verdicts, awards, orders, and judgments, which shall be completed within ninety days after the final order or judgment has been made in such cause or matter.’—

“R.C. 3107.05, ‘—The reports of the investigation by divisions B, C, and D of this section, shall be filed separately and shall be available for inspection only upon the personal direction of the probate judge.—’

“R.C. 3107.06, ‘—The written consent to the adoption shall not be filed with the adoption proceedings, but shall be filed separately and shall be available for inspection only upon the personal direction of the probate judge.—’

“It is apparent from the intent of the laws pertaining to adoptions that the records be kept secret and not subject to general public inspection. To facilitate this special indexes have been prepared by most courts and especially the Probate Court in Pickaway County.

“The question presented is whether the probate court in light of the above sections, may omit the decrees of adoptions from the general journal of the court and thus remove such decrees from public inspection and whether the court may record the entire proceedings separate and apart from the general recordings of the civil record, which also is subject to inspection. It would seem to carry out the general intent of legislature that such a procedure would be advisable and necessary, but in the light of the general proceedings the failure to record an order of adoption in the general journal could not effect the legality of an adoption proceeding, and likewise effect the rights of such child and the adoptive parents, as well as the blood relatives of the child. Therefore, it is felt that the legality of the procedure should not be left open to question.”

Section 3107.14, Revised Code, provides a special form of record for adoption cases. It reads as follows:

“The petition, the interlocutory order, the final decree of adoption, and other adoption proceedings shall be recorded in a book kept for such purposes and separately indexed. Such book shall be a part of the records of the probate court, and all consents, affidavits, and other papers shall be properly filed. Such papers, records, and books shall not be open to inspection or copy by any person, other than the parties of record and their attorneys, except upon order of the court for good cause shown.”

This section requires the special recording by the probate court of all proceedings in an adoption case in a book solely for such purposes and separately indexed. It further provides that such records of an adoption case shall not be open to inspection or copy by any person, other than the parties of record and their attorneys, except upon order of the Court for good cause shown.

From a reading of the quoted parts of Sections 3107.05 and 3107.06, Revised Code, as set forth in your letter, as well as Section 3107.14, *supra*, one can only conclude that it was the intent of the legislature that court records in adoption cases were not to be open to general public inspection, and were to be separately recorded and indexed.

To record the proceedings in the journal and final record under the provisions of Section 2101.12, paragraphs (E) and (G), Revised Code, would cause the proceedings to be open to public inspection and thus circumvent the unquestionable intent of the legislature and the provisions of Sections 3107.05, 3107.06, and 3107.14, Revised Code.

The general recording provisions as to probate records as now outlined in Section 2101.12, Revised Code, appear as part of the probate code, dating back to and before January 1, 1932.

The special recording provision for adoption cases in the probate court and as now set forth in Section 3107.14, Revised Code, was enacted in part effective January 1, 1944 (120 Ohio Laws, 434 (440) and was later amended to include all the adoption proceedings in 1951 (124 Ohio Laws 178 (194), and the confidential provisions of Sections 3107.05 and 3107.06, Revised Code, became effective January 1, 1946, 121 Ohio Laws 448 (450-451).

In *State, ex rel. Oliver, v. State Civil Service Commission, et al*, 168 Ohio St., 445, the court stated:

“The Administrative Procedure Act, Chapter 119., Revised Code, providing for an appeal from an order of an agency to the Court of Common Pleas was enacted subsequent to the Civil Service Act and would govern if there were an inconsistency.”

Also, the general rule in Ohio where there is a specific statutory provision for a particular case and a general statutory provision which includes the particular case but also relates to other matters, is that the specific statutory provision is an exception to the general statutory pro-

vision. On this point, it is stated in *Acme Engineering Company, v. Jones*, 150 Ohio St., 423, at page 421, that:

“It is a general rule of law in statutory construction that when there are two statutory provisions covering the same subject matter, one of which is general and the other special, the special statutory provision for a specific case is to be construed as an exception to general provisions which might otherwise include the particular case.”

Accordingly, it is my opinion and you are hereby advised, that proceedings in adoption cases should be separately recorded in a book kept for that purpose and separately indexed, in accordance with the provisions of Section 3107.14, Revised Code, and should not be journalized or generally recorded as provided by Section 2101.12, paragraphs (E) and (G), Revised Code.

Respectfully,

MARK McELROY

Attorney General