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ADOPTION OF ILLEGITIMATE CHILD—SECTION 3107.01 ET SEQ., RC—NO EXPENSE INCURRED BY CHILD WELFARE BOARD FOR PRENATAL CARE OR DELIVERY—CARE OF MOTHER OR OF CHILD AFTER BIRTH—EXPENSES CAN NOT BE CHARGED AGAINST ADOPTING PARENTS—ADOPTING PARENTS LIABLE ONLY FOR COSTS OF ADOPTION PROCEEDING—SECTION 3107.05 RC.

SYLLABUS:

When an illegitimate child is adopted pursuant to Section 3107.01 et seq. of the Revised Code, no expense incurred by the child welfare board for prenatal care or delivery, or for the care of the mother or child after birth can be charged against the adopting parents, and such adopting parents are liable, under the provisions of Section 3107.05, Revised Code, only for the costs of the adoption proceeding as therein set forth.

Columbus, Ohio, November 21, 1955

Hon. Everett Fahrenholz, Prosecuting Attorney  
Preble County, Eaton, Ohio

Dear Sir:

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

“The Preble County Child Welfare Board, organized under the provisions of Revised Code Section 335.04, wishes to charge adopting parents the actual expenses incurred by the county in providing prenatal and delivery care to the natural mother of the adoptive child.

“Two situations give rise to the expenditure of public funds. The Child Welfare Board furnishes financial assistance to a girl or woman pregnant with an illegitimate child, under the provisions of Revised Code Section 335.16. Also, the Juvenile Court furnishes special care to girls pregnant with an illegitimate child, as provided in Revised Code Section 2151.36. In each of the above situations, the child becomes legally eligible for adoption with placement made by the Child Welfare Board.

“May the Child Welfare Board legally charge adoptive parents such expenses?”

As you state, Section 335.16, Revised Code, gives the child welfare board authority to render certain aid to a girl or woman who is the actual or prospective mother of an illegitimate child. Paragraph (E) of that Section, enumerating the powers of that board, reads as follows:

“To provide social services to any girl or woman who is pregnant with or has been delivered of an illegitimate child;”

It seems unnecessary to consider whether the authority to provide “social services” is sufficient to authorize “financial assistance” such as the expense of prenatal and delivery care. Whether the expense of such care is or is not contemplated by the statute, we may at least start with the assumption that the child welfare board is authorized to incur some expense in behalf of the woman in question.

We proceed therefore to inquire whether the board may charge adopting parents of such child for the expense incurred by it in rendering this service. There is certainly no suggestion in Section 335.16 supra

that the expense of such service to the woman could be made the obligation of adoptive parents. The absurdity of such a proposition becomes more evident when we consider that most of these services are rendered before the birth of the child.

You refer to Section 2151.36, Revised Code, as making provision for the care of a girl or woman who is pregnant with an illegitimate child, but on careful reading of that section, I do not find any specific reference to such a situation. The section provides generally for the care of children who have come under the jurisdiction of the juvenile court as dependent, neglected or delinquent, and places the burden on the parents if they are able to pay, otherwise on the county. It is possible that a girl in the condition described may be a minor, and be dependent or delinquent, and therefore receive some assistance at the expense of the county, but there is nothing in this section which could be construed as authority to charge adopting parents of any child with the expense of such assistance rendered to the mother.

Turning to the statutes governing adoption of children, I note Section 3107.06, Revised Code, which reads in 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:

“\* \* \* (B) By each of the living parents, adult or minor, except as follows:

“(1) The mother of an illegitimate child shall be considered for the purpose of this section the sole parent and may give consent alone, in which case the consent shall state that it is given by the mother as the sole parent. \* \* \* ”

“(E) By any division, county department or board, or certified organization, having the permanent custody of the child.”

The above section is only relevant to your question in case the permanent custody of a child has been committed to the child welfare board. In that case, the consent of the board will be required for the adoption, but there is certainly no right given to the board to make a charge as a condition for its consent, by way of reimbursement to the county for the child's care or otherwise.

Section 3107.05 makes the only provision as to costs to be paid by the adopting parents, to wit:

“The cost of the proceedings shall be paid by the petitioner, and the court may include in such costs a reasonable sum for the services and the necessary expenses of the next friend; provided that if the next friend is a public employee, the part of the costs representing his services and expenses shall be paid into the county treasury as a part of the general costs.”

In the light of the foregoing, it is my opinion that when an illegitimate child is adopted pursuant to Section 3107.01 et seq. of the Revised Code, no expense incurred by the child welfare board for prenatal care or delivery, or for the care of the mother or child after birth can be charged against the adopting parents, and such adopting parents are liable, under the provisions of Section 3107.05, Revised Code, only for the costs of the adoption proceeding as therein set forth.

Respectfully,

C. WILLIAM O'NEILL

Attorney General