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1. CHILD CARE—PARENT MAY AGREE TO TRANSFER CUSTODY OF CHILD TO ASSOCIATION OR INSTITUTION MENTIONED IN SECTION 1352-12 G.C.—IF AGREEMENT IS FOR PERMANENT CUSTODY, ASSOCIATION OR INSTITUTION MAY CONSENT TO ADOPTION OF CHILD—SECTIONS 1352-1, 1352-6 G.C.
2. NO CHILD UNDER TWO YEARS OF AGE MAY BE GIVEN INTO TEMPORARY OR PERMANENT CARE OF ANY PERSON, ASSOCIATION OR INSTITUTION NOT CERTIFIED WITHOUT WRITTEN CONSENT OF DIVISION OF CHARITIES OR JUVENILE COURT—EXCEPTION, PERSONS RELATED BY BLOOD OR MARRIAGE OR LEGALLY LICENSED BOARDING HOME—SECTIONS 1352-13, 1352-1, 1352-6 G.C.
3. TRANSITORY COMMITMENT BY PARENT OF CHILD TO DAY CARE CENTERS, DEPARTMENT STORE NURSERIES OR PLAY CENTERS, “BABY SITTERS” OR MATERNITY WARDS IN HOSPITALS NOT SUCH TRANSFER OF LEGAL CUSTODY OF CHILD AS CONTEMPLATED BY SECTIONS 1352-12, 1352-13 G.C.—SUCH PERSONS OR ORGANIZATIONS NOT “INSTITUTIONS” OR “ASSOCIATIONS”—SECTION 1352-6 G.C.—OPINION 914, NOVEMBER 9, 1951, MODIFIED.

SYLLABUS:

1. Under the provisions of Section 1352-12, General Code, a parent may by agreement, transfer the custody of his child, either temporarily or permanently, to an association or institution mentioned therein, which has been approved and certified as provided in Sections 1352-1 and 1352-6, General Code; and if such agreement is for permanent custody, it may authorize such association or institution to consent to adoption of such child.

2. Under the provisions of Section 1352-13, General Code, no child under two years of age may be given into the temporary or permanent care of any person, association or institution which is not certified as provided in Sections 1353-1 and 1352-6, General Code, without the written consent of the division of charities (division of social administration) or by a commitment of a juvenile court; provided that such child may be placed temporarily without such written consent or 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. Opinion No. 914 issued November 9, 1951, modified.

3. The transitory commitment by the parent of a child to the care of (1) day care centers, (2) department stores maintaining so-called nurseries or play centers, (3) "baby sitters" or (4) maternity wards in public or private hospitals, is not such a transfer of the legal custody of a child as is contemplated by Sections 1352-12 or 1352-13, General Code, and such persons or organizations are not "institutions" or "associations" as defined in Section 1352-6, General Code.

Columbus, Ohio, February 26, 1952

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

In Opinion No. 914, released November 9, 1951, and addressed to you, it was held as disclosed by the syllabus:

"The terms 'institution' and 'association,' as defined in Section 1352-6, General Code, are not sufficiently broad as to comprehend (1) day care centers, (2) department stores maintaining so-called nurseries or play centers, (3) 'baby sitters,' (4) maternity wards in public or private hospitals, or (5) any other persons engaged in caring for children who have not been committed to their custody by an order of the juvenile court; and there is no requirement in the provisions of Sections 1352-1 et seq., General Code, that such persons and organizations be licensed to carry on their activities relative to child care."

In view of certain questions which have been raised concerning the scope of that opinion, particularly as it related to classification (5) referred to in the above quoted syllabus, I deem it proper at this time to re-examine said opinion.

The opinion in question was rendered in response to your request in which you asked specifically as to the first four of the above numbered groups. I see no reason to change my conclusion that the institutions there referred to are not such as are required to be certified under provisions of Section 1352-1, General Code. An examination of the entire law relative to child care convinces me that the legislature never intended to deal with those purely transitory devices for the care of children which do not in any way involve an attempt on the part of a parent to surrender the actual legal custody and control of a child and permit some other person or organization to stand in *loco parentis*. That the legislature has not considered such institutions as day nurseries or day care centers to

be within the contemplation of the present law requiring certification, is evidenced by the attempt of the 99th General Assembly to amend Section 1352-6 supra, by adding language which would include such day care centers. This was embodied in Senate Bill No. 250, which passed both houses, but was vetoed by the Governor. The matters covered in Item (5) were not directly a part of your inquiry. It seems evident that the statutes which were discussed in that opinion do not cover all of the laws relating to the custody of children.

The statutes bearing on the subject, Sections 1352-1 to 1352-14, General Code, refer repeatedly to the board of state charities. The powers and duties of such board are now lodged in the division of social administration in the Department of Public Welfare. See Section 154-60 and Section 154-60d, General Code. However, for convenience I shall refer to that division in the words used in the statutes, to wit, the "board" or "board of state charities." I do not consider it necessary to repeat here, the entire text of Sections 1352-1, 1352-2, 1352-3 and 1352-6, of the General Code, which were set out in the opinion referred to. However, I will call attention especially to certain portions of those sections. Section 1352-1 reads in part as follows:

"Such board shall annually pass upon the fitness of *every* benevolent or correctional *institution*, corporation and *association*, public, semi-public or private *as receives, or desires to receive and care for children, or places children* in private homes. * * *

(Emphasis added.)

I am informed by your office that the certificate above mentioned, is issued to two classes of organizations: (1) those which are authorized to take the temporary or permanent custody of children for placement and to consent to their adoption, and (2) those which are merely certified as "boarding homes," which do not have such authority as to placement and adoption.

Section 1352-6, General Code, defines the words, "institution" and "association," as follows:

"For the purpose of this chapter the words 'institution' and 'association' shall include any incorporated or unincorporated organization, society, association or agency, public or private, which may receive or care for children; any individual who, for hire, gain, or reward, receives or cares for children, unless he is related to them by blood or marriage; and also any individual not in the regular employ of a court, or of an institution or asso-

ciation certified in accordance with section 1352-1, 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 duly appointed guardian thereof."

Section 1352-2 and Section 1352-3, General Code, relate to the care of dependent, neglected or delinquent children. Section 1352-2 concerns directly the qualifications for incorporation of an association whose object may embrace the care of dependent, neglected or delinquent children or the placing of such children in private homes. Section 1352-3 authorizes the board of state charities to "receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court." The section further provides that county, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institution or boards.

It is further provided in this section that if such children have been committed to such institution or to the board of administration by the juvenile court, that court must first consent to such transfer, and the board shall thereupon become vested with the sole and exclusive guardianship of such child or children.

This section further provides that the board shall seek out suitable permanent homes in private families for such wards. Such children may then be placed in homes which have been investigated, upon trial or for adoption.

A consideration of the two sections last referred to might seem to lead to the conclusion indicated in the opinion aforesaid, that the institutions or associations referred to in Section 1352-6, *supra*, were only those charged with the custody and disposition of children who had been committed to custody on order of the juvenile court. However, this conclusion overlooked the provisions of certain other sections dealing in some manner with child custody.

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.”

(*Repealed in 114 Ohio Laws, 320; see Section 8004-6, General Code.)

Here we find a class of cases distinctly not of the character referred to in Section 1352-2 and Section 1352-3, General Code. This section contemplates that the parents of a child may enter into an agreement with one of the organizations which has been approved and certified by the division of charities whereby such child may be committed either to the temporary custody of such institution or association or to its permanent custody, depending upon the terms of the agreement. It is to be noted, however, that the institution or organization to which such child is committed, must be of the character referred to in Section 1352-1 supra, and that it must be of the class which is duly authorized to place children in homes.

Section 1352-13, General Code, 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.”

We have here another class of cases not involving in any way delinquency, neglect or dependency. This section, dealing with children under two years of age makes it unlawful to give any child under two years of age into the temporary or permanent care or 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.

It is further provided that 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. The distinction here, is clear. The legally licensed boarding home is that referred to in the second classification referred to earlier in this opinion to which the board of state charities is authorized by Section 1352-1 to issue a certificate. Section 1352-14, General Code, makes it unlawful for any persons, organizations, hospitals or associations which have not been approved and certified by the division of charities, department of public welfare, to advertise that they will adopt children or place them in foster homes, or in any way to become a party to the separation of a child from its parents. Section 12789-1, General Code, specifically provides that whoever violates any of the provisions of Sections 1352-12, 1352-13 or 1352-14, of the General Code, shall be subject to fine and imprisonment.

Read in the light of Sections 1352-12 and 1352-13 supra, the definition of "institution" and "association" as given in Section 1352-6 supra, certainly takes on a broader meaning than that stated in Opinion No. 914, and is not limited to those organizations to whom the juvenile court may commit "dependent, neglected or delinquent" children.

Section 1352-12 and Section 1352-13, General Code, were under consideration in Opinion No. 6716, Opinions of the Attorney General for 1944, page 108. After quoting the language of Section 1352-13, the then Attorney General made this comment:

"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."

Manifestly, the penal provisions of Section 12789-1 above referred to, were entirely overlooked. Continuing with his opinion the then Attorney General said:

"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 administra-

tion, 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."

I can agree in the main with his statement in regard to the effect of said Sections 1352-12 and 1352-13 but must of course disagree with his assertion as to the absence of any penalty for violation of Section 1352-13.

Giving effect to the two sections last referred to and by way of modification of my former opinion No. 914, it is my opinion:

1. Under the provisions of Section 1352-12, General Code, a parent may by agreement, transfer the custody of his child, either temporarily or permanently to an association or institution mentioned therein, which has been approved and certified as provided in Sections 1352-1 and 1352-6, General Code; and if such agreement is for permanent custody, it may authorize such association or institution to consent to adoption of such child.

2. Under the provisions of Section 1352-13, General Code, no child under two years of age may be given into the temporary or permanent care of any person, association or institution which is not certified as provided in Sections 1352-1 and 1352-6, General Code, without the written consent of the division of charities (division of social administration) or by a commitment of a juvenile court; provided that such child may be placed temporarily without such written consent or 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. Opinion No. 914, issued November 9, 1951, modified.

3. The transitory commitment, by the parent, of a child to the care of (1) day care centers, (2) department stores maintaining so-called nurseries or play centers, (3) "baby sitters" or (4) maternity wards in public or private hospitals, is not such a transfer of the legal custody of

a child as is contemplated by Sections 1352-12 or 1352-13, General Code, and such persons or organizations are not "institutions" or "associations" as defined in Section 1352-6, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General