

Office of the Attorney General
State of North Dakota

Opinion No. 82-74

Date Issued: November 12, 1982

Requested by: John M. Olson
Burleigh County State's Attorney

--QUESTION PRESENTED--

Whether a foster family home, licensed under Chapter 50-11 of the North Dakota Century Code, may accept placements from agencies other than the county social service board in the county in which the home is located.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a foster family home, licensed under Chapter 50-11, N.D.C.C., may accept placements from agencies other than the county social service board in the county in which the home is located, provided all other laws relating to the placement of children in foster care are adhered to.

--ANALYSIS--

Nowhere in Chapter 50-11, N.D.C.C., is there found any provision restricting placements in licensed foster family homes. The Department of Human Services, which is authorized to promulgate rules and establish standards for licensing, has not created, by rule or standard, a prohibition on the placement in a foster family home by an agency other than the county social service board in the county in which the home is located.

This does not, however, permit the unsupervised receipt of children into a foster family home. The Uniform Juvenile Court Act and the Revised Uniform Adoption Act Chapter 14-15, N.D.C.C., identify the agencies and persons which are authorized to place children in foster care where the parental custody is interrupted, whether temporarily or permanently.

The power to make such placements is granted only to the District Court; the Juvenile Court; agencies certified, licensed, or otherwise specially empowered by rule or law to place minors for adoption under Section 14-15-01(2), N.D.C.C.; licensed child-placing agencies under Section 27-20-30, N.D.C.C.; public agencies authorized by law to receive and care for a child under Section 27-20-30, N.D.C.C.; and the Department of Human Services under Sections 27-20-30, 27-20-31, 27-20-32, and 50-06-05.1(6), N.D.C.C.

Of particular relevance is Section 50-06-05.1(6), N.D.C.C., which directs the Department of Human Services 'to provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.' The phrase 'substitute parental care' is the functional equivalent of the phrase 'foster care for children' as defined in Section 50-11-00.1(1), N.D.C.C.

The Department of Human Services exercises its supervisory responsibilities over licensed 'child placing agencies' under the provisions of Chapter 50-12, N.D.C.C. Section 50-12-06(2), N.D.C.C., requires the licensed child-placing agency to enter into an agreement with the operators of a licensed foster home 'for the return of the child to the placing agency whenever in the opinion of such agency, or of the Department of Human Services, the best interest of the child shall require.' Section 50-12-08, N.D.C.C., grants such Department the power to order the licensed child-placing agency to 'remove the child' from 'an unsuitable home' and to 'place it in a home which meets with the approval of the department.' Section 50-12-08, N.D.C.C., also provides that, if the licensed child-placing agency fails to make suitable arrangements for the child within a reasonable period of time, the county social service board, upon referral from the Department, may make those arrangements.

The statutes referenced above, when taken as a whole, clearly leave the licensed foster family home free to accept placements from any agency properly authorized to make placements, but leave to the Department of Human Services the authority, subject to court order, to determine if the placement is appropriate or to terminate the placement.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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