

**OPINION
46-243**

January 16, 1946 (OPINION)

STATE TRAINING SCHOOL

RE: Placement of Pupils in Private Homes

This will acknowledge your letter in which you state:

It is the business of the state training school to place many, many boys and girls. Some of these are placed on trial vacations. Some are placed out for short periods of work. Others are placed in homes for more or less permanent residence or for school advantages, etc. Needless to say we make a very careful study of all these situations. We have a full time field worker and a social worker and often the state welfare office assists in these home investigations. There are, however, as you can imagine many instances where we know the families well, where it is to the advantage of the youngster being placed that no one in the community (even officials) know that the youngster is from the state training school. In some of these instances any form of investigation by an official or a welfare worker only disturbs the situation and can bring us no more information than we already have."

Your letter as above set forth raises the question whether the provisions of section 50-1101 of the North Dakota Revised Code of 1943 are applicable to homes in which children from the state training school are placed under the circumstances stated. In other words, whether homes receiving a child or children for placement by the state training school under circumstances stated would have to be licensed as provided by section 50-1101.

Any placement of any child, even under the circumstances described in your letter, I assume is made with the approval of the board of administration.

In order to attempt to get at the true intent of the statute involved, I will set forth its origin. Section 50-1101 of the North Dakota Revised Code of 1943 was originally section-1 of chapter 161 of the 1923 Session Laws, later incorporated into the 1925 supplement as section 5099b1. It reads as follows:

Any person, partnership, voluntary association or corporation, which owns or operates a home or institution receiving, during the calendar year, more than three children under the age of eighteen years, shall procure annually from the board of administration a license so to do; provided, however, that this act shall not apply when the children, received by such person are related to him by blood or marriage; and provided, further, that this act shall not apply to any home or institution under the management and control of the state."

This section was amended by section 1 of chapter 193 of the 1939 Session Laws and reads as follows:

Any person, partnership, voluntary association or corporation, which owns or operates a home or institution receiving, during the calendar year, one or more children under the age of eighteen years, shall procure annually from the division of child welfare of the public welfare board a license so to do; provided, however, that this act shall not apply when the children received by such person are related to him by blood or marriage; and provided, further, that this act shall not apply to any home or institution under the management and control of the state".

The only change in the section as originally enacted in 1923, and as amended in 1939, are the following: The words "one or more children" and "Division of Child Welfare of the Public Welfare Board" are used in the latter statute instead of "more than three children" and "board of administration" in the former statute.

Section 50-1101 of the North Dakota Revised Code of 1943 was revised, and as now contained in the Revised Code, reads as follows:

Any person, partnership, voluntary association, or corporation owning or operating a home or institution receiving for day nursery or full time care or otherwise, during the calendar year, one or more children under the age of eighteen years shall procure annually from the division of child welfare of the public welfare board a license so to do. The provisions of this section shall not apply when the children received by such person are related to him by blood or marriage, nor shall it apply to any home or institution under the management and control of the state."

While the above revised statute does not read exactly as section 1 of chapter 193 of the 1939 Session Laws, essentially its meaning is the same. The words "for day nursery or full time care or otherwise," were added by the code revisers and the code commission. The reviser's note appended to the revised section states: "We have inserted 'for day nursery or full time care or otherwise,' in this section to clarify the legislative intent."

The ascertainment of legislative intent is sometimes difficult, but the fact that the code revisers felt that the phrase "for day nursery or full time care or otherwise" should be inserted indicates that the revisers felt that the statute was applicable only to a home or institution that received a child or children for a day nursery or full time care or otherwise. It seems quite certain that the intent of the statute was to license only those homes that are owned and operated as a home or institution, for the specific purpose of receiving for day nursery or full time care children under eighteen years, as a business. It seems improbable that the legislature intended to license any home or institution that was not in the business of receiving a child or children for placement for either day nursery or full time care, or such a home as merely took a child under eighteen years of age because of the mutual benefit that might be derived for the home and the child, and where the head of the home was engaged in a trade or profession, and that the taking of such child was merely for the purpose of enabling the child to receive

whatever benefits were to be obtained for the child. The intent of the statute was to supervise and license only those homes that made it a business to receive children under eighteen years of age for full time care or otherwise for a consideration.

Section 50-1102 and 50-1105 of the Revised Code further ascertain and indicate the intent of the legislature with reference to the licensing of a home or institution for care of children. Section 50-1102 sets forth certain requirements that must be met by the person or institution proposing to operate a home and was undoubtedly enacted for the benefit of the children and to effect their best interests. The condition under which such a home can procure a license would not be applicable to a private home. Nor does it seem probable that the legislature ever had any intent that a private home receiving a youngster merely to be of assistance to the youngster and perhaps of some benefit to the private home would be required to have such rules and regulations laid down for its conduct by the child division of the public welfare board. Especially would that be true of homes that are of a high standard and undoubtedly the state training school and the board of administration would not place any boy or girl in any home until it has ascertained that it was one of high standard.

The reading of the whole of chapter 50-11 of the North Dakota Revised Code of 1943 seems to indicate that the licensing and supervision, and other requirements, set forth therein pertain to homes or institutions who are engaged in the business of receiving a child or children for care.

It seems inconceivable that the legislature had in mind the licensing of a home that merely took in a youngster to be of some assistance to the youngster in rehabilitating himself or herself, or in procuring educational advantages, where no consideration was involved, except such services as the youngster could give by way of assistance in the home in the performance of some home tasks.

Accordingly, it is the opinion of this office that the placement of a child in private homes under the circumstances set forth in your letter and quoted herein, if placed after the approval of the board of administration, are not within the requirements of section 50-1101 of the North Dakota Revised Code, and that such homes need not be licensed.

NELS G. JOHNSON

Attorney General