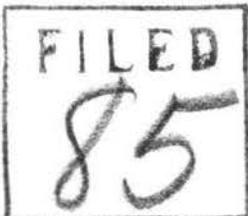


CHILD CUSTODY:  
JUVENILE COURT:



Section 453.110 RSMo 1949, provides for transfer of custody of child from person, agency, organization or institution having legal custody of said child to any parent, agency or organization or institution for care in a family home without a court order provided the person, agency, organization or institution having legal custody of the child shall retain the right to supervise the care of said child and to resume custody of said child.

August 27, 1957

Honorable John S. Stevens  
Assistant Prosecuting Attorney  
St. Louis County  
Clayton, Missouri

Dear Sir:

This is in answer to your opinion request to this office dated July 31, 1957, which reads as follows:

"Is there a violation of Sec. 453.110 R.S. Mo. 1949, when a child, properly in the custody of a licensed child welfare agency, is placed by that agency in the home of prospective adopting parents without first obtaining a Court Order for change of custody."

Section 453.110 RSMo 1949, to which you refer, reads as follows:

"1. No person, agency, organization or institution shall surrender custody of a minor child, or transfer the custody of such a child to another, and no person, agency, or organization or institution shall take possession or charge of a minor child so transferred, without first having filed a petition before the circuit court sitting as a juvenile court of the county where the child may be, praying that such surrender or transfer may be made, and having obtained such an order from such court approving or ordering transfer of custody.

"2. This section shall not be construed to prohibit the placing of a child in a family home for care by any parent, agency, or organization or institution, if the right to supervise the care of the child and to resume custody thereof is retained. If any such

Honorable John S. Stevens

surrender or transfer is made without first obtaining such an order, such court shall have the right on petition of any public official or interested person, agency, organization, or institution, to inquire into the facts and to make such order as to the custody of such child as may be for the best interests thereof.

"3. Any person violating the terms of this section shall be guilty of a misdemeanor."

In Volume 4, Journal of the Missouri Bar, September, 1948, at pages 228 to 231, there appears an article entitled "The New Adoption Act" written by Harold S. Cook and Fred A. Eppenberger of the St. Louis Bar.

In discussing the second paragraph of Section 453.110, supra, which at that time was Section 9616, RSMo 1939, they state at page 231:

"This section which prohibits surrender or transfer of custody of a minor without an order of the Juvenile Court, has been broadened to include within its provisions, institutions as well as individuals. The second sentence has been added in order to make it clear that the section is not intended to apply to the placement of children in family homes for care if the right to supervise the care and to resume custody is retained. The third sentence gives the Court broad powers to determine questions as to the future custody of the child in case the section is violated."

Under paragraph 2 of Section 453.110, supra, and the interpretation placed thereon by the above cited article, it would seem that a child can be placed in a family home for care by any parent, agency or organization or institution without an order from the court so long as the person, agency, organization, or institution having legal custody of the child shall retain the right to supervise the care of the child and to resume custody of the child.

Honorable John S. Stevens

CONCLUSION

It is the opinion of this office that Section 453.110, RSMo 1949, is not violated when a child, properly in the custody of a licensed child welfare agency, is placed by that agency in the home of prospective adopting parents without first obtaining a court order for change of custody provided the licensed child welfare agency having legal custody of the child retains the right to supervise the care of the child and to resume custody of said child.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Richard W. Dahms.

Yours very truly,

John M. Dalton  
Attorney General

RWD:gm:mw