state, or any county of this state for a paper required by them for official use. Extradition papers clearly and specifically fall within the negative proviso of this statute.

The only other fees that your office is, by statute, required or allowed to collect are those concerning corporations as contained in the Corporation Fee Act, Acts of 1957, Ch. 230, Secs. 1 through 7, as found in Burns' (1957 Supp.), Sections 25-601 to 25-606. There is no provision in this act for the collection of an extradition fee.

Since you are specifically prohibited by statute from collecting this type of fee and are nowhere authorized by statute to collect such fee, I conclude that you have no authority to do so.

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OFFICIAL OPINION NO. 32
May 15, 1958

Hon. Robert H. Berning
State Representative
506 Dime Bank Building
Fort Wayne 2, Indiana

Dear Representative Berning:

This is in response to your request for an Official Opinion interpreting a portion of Section 6 of the Acts of 1941, Ch. 146, entitled "AN ACT concerning the adoption of persons," as amended and set out in Burns' (1946 Repl.), Section 3-120, to-wit:

"If such child have parent or parents living, he, she or they shall consent in writing to such adoption. The minority of any parent shall not in or of itself be a bar to such consent: Provided, however, That if either parent be a minor, consent of such parent must be accompanied by the written approval of the investigating agency aforesaid if any there be and if none, of the state department of public welfare. * * *"

Your letter says, in part:

"The interpretation which the Allen County Department of Public Welfare has placed on this particular
section of the statute is that a consent presented for approval must contain a full disclosure of all the facts involved including the name or names of the prospective foster parents. At such time, the Welfare Department interrogates the parent or parents of the child under minority in order to determine that they understand the full import of giving such a consent and furthermore make some investigation concerning the proposed foster parents to determine that such placement is a proper placement. The department furthermore takes into consideration Sections 22-2401 and 22-2405 in determining whether such placement is a proper and legal placement. The approval of the consent to adoption is withheld until the department is entirely satisfied concerning all the circumstances of the placement that it meets with good social practice and that such placement is a proper and legal placement.

"Another interpretation has been placed on the original statute, 3-120, which is in effect a contention that the sole function of the social agency is to place an approval on the consent to adoption without first having made an investigation concerning the circumstances surrounding the placement, consent or foster parents. This line of reasoning further contends that Sections 22-2401 and 22-2405 do not apply where a placement is made on behalf of minor parents by the attending physician in cooperation with an attorney."

The quoted part of Burns' 3-120, supra, is out of context, being internally situated within the part of Acts of 1941, Ch. 146 having to do with the adoption of persons under the age of twenty-one [21] years; therefore a brief summary of the adoption procedures contained in that law should preface this opinion and serve to clarify the discussion.

Adoption is of probate jurisdiction exclusively, the procedure being initiated by filing a petition to adopt a child, said petition to contain information about the child, adopting parent and the natural parents or guardian. A copy of the petition is referred to an agency to report its investigation and recommend as to the adoption in order to advise the court.
A period of supervision by a licensed child-placing agency must precede granting of the adoption.

Following the part of Burns' 3-120, supra, quoted above concerning the necessity for parental consent, there is an enumeration of situations in which the consent of one or both parents may be unnecessary.

Filing of the report and recommendation and proper parental consent are procedural prerequisites to granting the decree of adoption.

"Investigating agency" used in the quoted portion of Burns' 3-120, supra, refers to "any duly licensed child-placing agency or governmental agency" identified in previous sections of the Acts of 1941, Ch. 146: By Sec. 1, as found in Burns' (1957 Supp.), Section 3-115, which speaks of the "agency having custody of such child"; by Sec. 3, as amended, as found in Burns' (1946 Repl.), Section 3-117, which provides that a period of supervision by a duly licensed child-placing agency must precede granting of adoption, and by Sec. 4, as amended, and as found in Burns' (1946 Repl.), Section 3-118, which prescribes the investigating duties of such child-placing agency, thus:

"* * * As soon as such petition shall be found to be in proper form such clerk shall forward one [1] of the triplicate copies aforesaid to the state department of public welfare and one [1] copy to a qualified agency as prescribed in Sec. 3, preference being given to the agency, if any, sponsoring such adoption, as shown by such petition. * * * Not more than sixty [60] days from the date of such reference of said petition to such agency, such agency shall submit to such court a written report of its investigation and its recommendation as to the advisability of such adoption, which report and recommendation shall be filed with such adoption proceedings and become a part thereof. Such report shall as far as possible include but not be limited to the former environment and antecedents of such child, the fitness of such child for adoption, and of the suitability of the proposed home for such child. * * * The report and recommendation of said welfare board, shall not be binding on the court, but shall be advisory only." (Our emphasis)
The Acts of 1941, Ch. 146, is drawn to encompass a variety of situations, whether a child-placing agency has prior custody of the child proposed to be adopted, or whether there be no child-placing agency sponsoring the adoption. In either case, Burns' 3-118, supra, prescribes investigation by a child-placing agency subsequent to filing of the petition for adoption, but Burns' 3-120, supra, establishes no relative order in which parental consents must be signed.

Your letter sets out two interpretations which diverge on prerequisites to approving consent under Burns' 3-120, supra, the first being that the consent must contain full disclosure of all the facts involved, including the names of the prospective foster parents, and that approval of the consent be granted only after investigating them.

It is to be noted that such information is required to be in the petition of adoption by Acts of 1941, Ch. 146, Sec. 2, as found in Burns' (1946 Repl.), Section 3-116, and is disclosed to the investigating agency by its receipt of the petition under Burns' 3-118, supra, but it is not required to be supplied to the natural parents by any part of the Acts of 1941, Ch. 146.

Burns' 3-120, supra, does not define the basis upon which written approval of the parents' consent should be made; however, that approval is apparently designed to minimize the effect of minority on contractual capacity of the parent and is not directed toward placement of the child, that being the subject of agency recommendation under Burns' 3-118, supra, which suggests the investigative area to be reported upon to the court should include "the suitability of the proposed home for such child."

Based upon the subject-matter and apparent purpose of the two documents requiring agency action, it would seem that investigation of the "proposed foster parents and determination that the placement is" proper would be encompassed in the report and recommendation of the investigating agency to the court under Burns' 3-118, supra, and it would also seem that a determination that the parents "understand the full import of giving consent" could and should be a factor in determining whether written approval of that consent should be made.
The first interpretation set out in your letter considers Acts of 1909, Ch. 154, Secs. 1 and 5, as found in Burns' (1950 Repl.), Sections 22-2401 and 22-2405, "in determining whether such placement is a proper and legal placement."

The Acts of 1909, Ch. 154, Sec. 1, as found in Burns' (1950 Repl.), Section 22-2401, makes it:

"* * * unlawful for any person, firm, corporation or association to * * * engage in, or assist in conducting, a business of placing infants, as herein defined, without having in full force a written license therefor * * *." (Our emphasis)

Burns' 22-2401, supra, is probably superseded by the Acts of 1945, Ch. 185, Sec. 1, as set out in Burns' (1950 Repl.), Section 22-2416, which is identical with Burns' 22-2401, supra, except that it covers children rather than infants.

The Acts of 1909, Ch. 154, Sec. 5, as set out in Burns' (1950 Repl.), Section 22-2405, defines the business of placing infants as follows:

"Whoever advertises himself or holds himself out as placing, finding homes for, or otherwise disposing of infants under three [3] years of age, or whoever places or assists in placing in homes of persons other than relatives, or causes, or assists in causing, the adoption or disposal otherwise of an infant under three [3] years of age, shall be deemed as engaged in or assisting in conducting a business of placing infants." (Our emphasis)

The correlative passage in the Acts of 1945, Ch. 185, Sec. 5, as found in Burns' (1950 Repl.), Section 22-2420, says:

"A child-placing agency is defined as any person, association or corporation who advertises himself or itself or holds himself or itself out as placing or finding homes for or otherwise disposing of children or who places or assists in placing in homes of persons other than relatives or causes or assists in causing the placement for adoption or disposal otherwise of children." (Our emphasis)
Whether the adoptive child be over or under three years of age, it is to be seen by the above statutes that persons causing or assisting in causing placement for adoption are required to be licensed; however, the consequences of doing so without being licensed are defined by the applicable statute as being punishable by fine and/or imprisonment, and are in no way connected with county welfare department approval of the consent of minor parents to the adoption of their children.

It is therefore my opinion that the first interpretation detailed in your letter is erroneous insofar as it requires the consent of a minor parent to the adoption of a child to disclose the name of the prospective parents and requires investigation of the proposed parents to be undertaken prior to approving parental consent. Because of the possibility that parental consent may precede the petition for adoption (and necessarily any "sponsor" of such adoption) the fact that its sponsor is not licensed as a child-placing agency, under Burns' 22-2401, supra, is not properly considered in determining whether a minor parent's consent to adoption should be approved; however, it is proper to ascertain whether the minor parent understands the full import of such consent before approving the same. It is hereby recognized that the foregoing opinion approximates the second interpretation as set out in your letter, which is, to the extent above indicated, approved.

The second interpretation further questions the coverage of Burns' 22-2401 and 22-2405, supra. While it has heretofore been indicated that both may have been superseded by Burns' 22-2416 and 22-2420, supra, substantially identical language gives rise to the same problem, viz: whether said sections apply to a placement made by an attending physician in cooperation with an attorney.

It is assumed that neither an attorney nor a physician would advertise or hold himself out as finding homes for children, such activity being contrary to the canons of professional conduct for both professions; therefore, the only possibility of their inclusion under either the Acts of 1909, Ch. 154, or the Acts of 1945, Ch. 185, would be in the emphasized alternative definitions of the business of placing infants or children. (See Burns' 22-2405, supra, and 22-2420, supra.)
The word “placement” has a breadth of meaning. Webster’s New International Dictionary, Second Edition, defines it as “the act of placing, or fact of being placed.” The verb “place” is defined as:

“To put in a particular spot or place, or in a certain relative position; to fix; settle; locate; dispose; * * *.”

While the Acts of 1909, Ch. 154, and the Acts of 1945, Ch. 185, are both essentially licensing statutes, it has been here-tofore noted that both provide criminal penalties for violations. As criminal statutes, they must be strictly construed that they define the crime with particularity and give fair warning of what the law intends to do if a certain line is passed, in language that the common world will understand.


It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit, nor within the intention of its makers.

See Jarvis v. Hitch (1903), 161 Ind. 217, 67 N. E. 1057.

It is apparent that the legislative intent in requiring licensing for persons engaged in the business of placing infants (or children) was to regulate the otherwise unrestricted traffic in human lives and to avoid the possibility that unscrupulous persons would participate therein. The very fact that the word “business” is used indicates that the service is rendered for profit and that it is a continuing endeavor. Properly speaking, the business of a physician or attorney is the practice of medicine or of law and any activity relating to the placement of children would be incidental thereto. Both professions are voluminously regulated by specific statutes applicable to them, which fact minimizes the possibility that persons following either profession would be unscrupulous individuals.

It is thought that the legislative action in enacting Acts of 1941, Ch. 146, relevant to the adoption of heirs and including therein provisions for supervision, investigation, and other activity in this respect by state and county departments of
public welfare is a full expression of their function in the matter of adoption. By permitting child-placing agencies licensed by the state department of public welfare to act in preference to the county department of public welfare in supervising and investigating proposed adoptions, the principles of the county department of public welfare should be adhered to even though the county department is not assigned the petition of adoption for investigation. Yet Burns' 3-118, supra, contemplates the possibility that the "sponsor" of an adoption may be neither the county department of public welfare nor a duly licensed child-placing agency; therefore, the Legislature did not intend to exclude from adoption procedures a sponsor who was not of the above categories. Furthermore, the Acts of 1941, Ch. 146, is the supreme law in regards to the adoption of heirs inasmuch as it contains Section 13 which repealed all laws and parts of laws in conflict therewith.

If the Acts of 1909, Ch. 154, were to be considered repealed, insofar as it related to persons causing adoption of infants, by the Acts of 1941, Ch. 146, it was substantially re-enacted by the Acts of 1945, Ch. 185. Under such a situation the effect of the intervening statute in this case, Acts of 1941, Ch. 146, continues to modify the provisions of that later one subsequently re-enacting the provisions of the earlier statute so modified.

City of New Albany v. Lemon et al. (1926), 198 Ind. 127, 149 N. E. 350.

In answer to the second phase of the second interpretation, it is my opinion that parts of Burns' 22-2405 and 22-2420, supra, are modified by the adoption statute to permit sponsoring of adoption by others than those licensed thereunder; therefore it is my opinion that a physician who cooperates with an attorney in arranging the placement of a child for adoption would not be required to be licensed as a child-placing agency unless he advertised himself or held himself out as placing or finding homes for infants or children.

In conclusion, it is my opinion that the basis for investigating agency approval of the consent of a minor parent to the adoption of his child is not properly based upon any consideration other than the consent itself, which excludes the
areas required to be investigated and to be the subject of a report and recommendation by the investigating agency.

Violations of Burns’ 22-2401 and 22-2405, *supra*, are punishable by the provisions of the act of which they are a part and such violations have no place in determining whether the investigating agency should or should not approve consent of minor parents.

Burns’ 22-2401 and 22-2405, *supra*, are not intended to cover a physician placing a child for adoption in cooperation with an attorney.