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## Observations and Suggestions concerning Wyoming Statutes Relating to Adoption Based on Abandonment

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the selection would be state-wide rather than local and often secret. This agency would also facilitate the adoption of children from other sources such as the Wyoming State Children's Home, the State Home for Dependent Children, private child-caring agencies, Industrial Institutes for Boys and Girls, foster homes and private homes.

Under existing laws, if the parents do not want to care for their child, the court or County Commissioners should be informed in order that they might obtain the consent of the parents to have the child adopted, or declare the child abandoned and provide for its adoption.

In summary, looking at the adoption problem through the eyes of the Welfare Department, the County Attorney, and the District Judge, the following specific suggestions are urged:

1. That statutory changes be made so that finality in adoption proceedings based on abandonment will be achieved.
2. That the welfare of the child be made the primary consideration in adoption proceedings, with all else secondary.
3. That a proceeding resulting in a "termination of parental rights" be created in order to streamline adoption procedures in abandonment cases and "vicious and immoral environment" cases.
4. That a single state agency be created through which all adoptions must be channelled.

MERLE B. CASE

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OBSERVATIONS AND SUGGESTIONS CONCERNING WYOMING STATUTES  
RELATING TO ADOPTION BASED ON ABANDONMENT

Abandonment of children (or its equivalent, desertion) is mentioned in no less than ten different Wyoming statutes. Some of these directly relate to adoption and others do not. In order to get the complete statutory picture on abandonment of children we shall at the outset of this article mention and briefly characterize all of the statutes having to do with abandonment. References are to Sections of Wyoming Compiled Statutes, 1945, unless otherwise noted.

The following "abandonment statutes" directly relate to adoption: 58-213, 58-214, 58-113, 58-217 and 58-609.

The first of these provides that orphans and abandoned children may be adopted, and that the County Commissioners may provide for such adoptions in loco parentis. In the case of parents "abandoning their children, without providing for their support and education" the Commissioners are given the same authority as if the parents were dead, except that if the residence of the parents is known, the Commissioners are re-

quired to notify them to take the children away or provide for them; and "if the parents do not claim such children" within three months after the notice is given, the Commissioners may provide for their adoption *as if they were orphans*. 58-214 covers the details of reclamation. The process of adopting orphans obviously does not and cannot involve the obtaining of consent from parents, for there are none; hence, if abandonment is established, and the County Commissioners take over, 58-206 and 58-207 would seem not to apply.

It is necessary to digress for a moment in order to consider the two statutes last mentioned. They are set out in full in the footnote.<sup>1</sup> It will be observed that these statutes, in terms, apply only to *nonconsenting living parents*. If abandonment can be established, and if abandoned children may be adopted as if they were orphans, then no consent nor any notice under 58-206 and 58-207 *should* be required to effect a valid adoption. No Wyoming case exists in which abandonment was determined by a court in a proceeding separate from the adoption proceeding itself. Where the two are combined (as in *Lucas v. Strasuer*)<sup>2</sup> it is obviously necessary to notify the parents under 58-206 and 58-207 in the course of the adoption proceeding. This unnecessarily complicates the proceeding and increases the uncertainty of its outcome. If there has been no abandonment and the parents will not consent, there can be no adoption. It is therefore suggested that persons hoping to obtain an adoption based upon abandonment proceed *first* to secure a finding of abandonment, and *then* institute the adoption proceeding, relying upon 57-213. Such a finding could *follow* the expiration of the three month period allowed for reclamation of the child by its parents, if desired, but it should logically *precede* the giving of notice to reclaim the child.

58-113 provides that whenever a district court is satisfied that a minor child has been "deserted" by its parents, and that it has no legal guardian, the child may be adopted *as if an orphan*. If the term "deserted" is synonymous with "abandoned", the effect of this statute would be the same as

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1. "When a petition is filed and presented to the district judge, praying for the adoption of a child or children, unless said petition is accompanied with the written consent of the living parents of said child, such judge shall by written order set such petition for hearing and require such parents who are living to appear on the day set and show cause why such petition should not be granted and an order of adoption made thereon." Section 58-206, Wyo. Comp. Stat. 1945.

"A copy of the petition and the order made thereon shall be served on the parents of such child who have not consented to the adoption, who can be found in the state, at least ten (10) days before the day specified in the order of hearing. When such parents cannot be found in the state, and such fact is made to appear by affidavit of one of the petitioners for adoption, setting forth the last known address of such living parents, such order shall be published once a week for three (3) successive weeks in a newspaper of general publication in the county, as the court may direct, the last publication to be at least twenty (20) days before the time appointed for the hearing, and a copy of said notice shall be immediately mailed to the last known address of said parent. Parents served personally or by publication as herein provided, shall be bound by the findings and judgment of the court respecting such adoption as defendants served with process in a civil action." Section 58-207, Wyo. Comp. Stat. 1945.

2. *Lucas v. Strauser*, 65 Wyo. 98, 196 P.2d 862 (1948).

58-213, and *after* desertion has been established, no notice to or consent by the parents would be needed. Corpus Juris<sup>3</sup> defines abandonment to be a total *desertion*. Desertion is defined in Corpus Juris<sup>4</sup> as "a word uniformly used to denote a willful *abandonment* of an employment or duty in violation of a legal or moral obligation." Bouvier's Law Dictionary describes desertion as "the act by which a man abandons his wife or children, or either of them." It is therefore believed that so far as the present problem is concerned, the words are quite synonymous and may be used interchangeably.

But there is no denying the existence of a conflict between the notice and consent requirements of 58-206 and 58-207, and the permission given by 58-213 and 58-113 to proceed, where there has been abandonment, as if the child were an orphan—which would dispense with the necessity of notice or consent. 58-206 begins:

"When a petition is filed and presented to the district judge, praying for the adoption of a child or children, unless said petition is accompanied with the written consent of the living parents of said children, etc.,"

the hearing must be set, order to show cause issued, and a copy of the petition and order served or published. This conflict is one of the statutory "kinks" connected with abandonment which should be straightened out.

The fourth statute directly relating to adoption based on abandonment is 58-217. According to this section, the State Board of Charities and Reform may consent to the adoption of any child who has been committed to the "Wyoming State Children's Home" and who has remained there for at least one year. This the board may do without the consent of the parents of the child, and "said consent by said Board shall be as valid, binding and legally effective as though made by the natural parents . . . of said child." Here, again are possibilities of conflict with 58-206 and 58-207.

The "Wyoming State Children's Home" is evidently the home at Casper called the "Home for Orphan and Dependent Children" (see 19-201 and 19-202 as amended). How may children be committed to this Home? (1) 58-108 permits a finding by a district court that a minor under 14 years of age "is without a guardian and is entirely abandoned by his parents." Under 58-110 the court may commit him to a "home for children". This apparently includes the Wyoming State Children's Home. (Here again is a provision for certain action which may be taken upon an abandonment being established). (2) 58-696 defines "dependent children" as including persons of either sex under 16 who are "abandoned". (This definition conflicts somewhat with the definition set out in 25-101.) They

3. 1 Corpus Juris 5.

4. 18 Corpus Juris 969.

evidently could be committed to the Wyoming State Children's Home. They also can be committed to a private child-caring agency, (58-609) which, as we shall see, has the authority to consent to their adoption. (3) A child could come to the Wyoming State Children's Home, or to a child caring agency, through the operation of 58-501, as well.

The final statute directly relating to abandonment and adoption is 58-609. This section is found among the statutes relating to delinquent and dependent children, and has to do with powers and duties of child-caring agencies, societies or institutions. These are private agencies, elaborately defined and regulated by 58-608 to 58-616, inclusive. By 58-609 (1), child-caring agencies are given the power to consent to *loco parentis* to the adoption of dependent children committed to their care by the courts. As we have already noted, abandoned children are probably included in the definition of dependent children. This consent may be given "where such action is deemed proper and desirable." Deemed by whom? Presumably it would be the governing board of the child-caring agency.

58-609 (4) provides that

"when foundlings or other abandoned children whose parentage is unknown, and who have not been assigned by a court order to a child-caring organization are presented for adoption, the judge having jurisdiction in the county of the residence of the parties desiring to adopt may record his consent in *loco parentis*."

Here we have even the judge standing in *loco parentis*. The quoted language "foundlings or other abandoned children whose parentage is unknown" seems to exclude cases in which parents are known to be living, hence the section does not help to solve the problem of consents of living parents. It may be observed, however, that this Section is in part a statute providing for the adoption of *orphan* children, and, as such, would be in conflict with 58-213—another "statutory kink" which should be straightened out.

So much for "abandonment statutes" directly relating to adoption. The following additional statutes do not directly concern adoption but do pertain to abandoned children:

58-101 makes it unlawful for parents of a child under 19 years of age to "negligently or knowingly abandon or fail to provide the necessities of life for such child". By 58-104, violation is made a misdemeanor, with a fine of not more than \$1,000 and/or a jail sentence not exceeding 12 months.

58-108 authorizes the district court to appoint a guardian for a child under 14 who has no guardian "and is entirely abandoned" by his parents.

Whenever a parent has been convicted or violating 58-101, "any person" may apply to the district court (according to 58-110) to have a guardian of the abandoned child appointed. The court may appoint a guardian, or

place the child in a children's home. It may also enter a support order against the parents.

The 1953 Legislature enacted a statute (Session Laws of 1953, Chapter 134) which provides among other things that any person legally responsible for the support of a child under 18 who shall abandon or desert the child shall be liable to a civil action, supported by attachment, and leading to a money judgment for expenses incurred by the plaintiff for the support of the child, plus a decree for future support. This statute is the subject of another article appearing in this issue of the Journal.

58-501 provides that a petition may be presented to the district court setting forth that there is in the county "any child deserted by one or both of its parents" who has no suitable home or abode, and asking for the appointment of a guardian. Notice and order to show cause are to be served on the parents. At the hearing the court may appoint a guardian or commit the child to a Children's Home or child-caring agency.

These many statutes relating to abandoned children clearly indicate the concern which our legislature has expressed with the subject of abandonment of children. Yet the legislature has nowhere defined abandonment, nor has it provided a definite procedure by which abandonment may be determined. We submit that both of these things should be done, and that when they are done, a long step will have been taken toward clarifying the status of adoptions based upon abandonment.

In Wyoming's leading case, *Lucas v. Strauser*,<sup>5</sup> the court said, "Evidence of abandonment must show conduct on the part of the parent from which it can be reasonably inferred that it was his purpose to forego all parental duties and relinquish all parental claim to the children." An Ohio court stated<sup>6</sup> that abandonment, so as to dispense with consent, must be "willful" and there must be a "settled intent" to renounce permanently the rights and duties of parenthood. In addition to the elements of abandonment set out in the two aforementioned cases, perhaps it would be desirable to go further and enact a statute setting a time limit after which the neglect of all parental duties will ripen into abandonment. This very result has already been effected, under limited circumstances, by 58-217. An Oregon statute states that if any person leaves the state and shall fail, for the period of sixty days, to provide necessary food, shelter, care, and clothing for his children, it shall be prima facie evidence that such person abandoned his children.<sup>7</sup> A North Dakota statute<sup>8</sup> provides that where the child has been in the home of the persons wishing to adopt the child for a period of two years, there shall be an automatic legal abandonment terminating all claims of the natural parents. Persons more concerned with the rights of the parents state that time proscriptions and intent seem contradictory, and

5. *Lucas v. Strauser*, 65 Wyo. 98, 196 P.2d 862 (1948).

6. *In re Gates*, 84 Ohio App. 269, 85 N.E.2d 597 (1948).

7. Ore. Comp. Laws 1940, Title 23, Sec. 1043.

8. N.D. Rev. Code, Title 14, sec. 1116 (1943 as amended 1949).

that time may be evidence of intent but should never be conclusive evidence of intent.<sup>9</sup> In the case of *In re Bistany*,<sup>10</sup> where the parents left their child with her aunt for upwards of two years and furnished nothing except some slight gifts, there was held to be no abandonment because the parents did not "intend" to relinquish their rights to the child. But those concerned with welfare of the child ask the question, "Of what importance to a child is it that his parents did not *intend* to rob him of the health and security of a home, if such a home is not provided?" A compromise between the rights of the parent and the welfare of the child could be effected by a statute which places the burden of proof upon the parent in proving that abandonment has not taken place where the neglect of parental duties to the child has gone beyond the prescribed period of time. A suggested statute taking in the elements of abandonment as well as the time proscription is as follows:

"Any parent or guardian who, at some point of time, willfully and intentionally renounces, or by his or her acts, relinquishes all parental duties and claims to his or her children or children in his or her care, shall be deemed to have abandoned such children. Where any parent or guardian fails to provide the necessary shelter, food, care, and clothing for his or her children or children in his or her care for a period of one year, such action shall be presumptive evidence that such person has abandoned such children and the burden of proof in such case shall be upon the parent or guardian, whichever the case may be."

The above statute, by providing a period beyond which the child is presumed to be abandoned, does not conflict with the theory of intent which is deemed to be a basic element of abandonment,<sup>11</sup> in that when the time proscription has expired, such is not *conclusive* evidence of abandonment but only *presumptive* evidence, which casts upon the parent deemed to have abandoned the child the burden of proving that he or she did not intend to abandon the child.

A second desirable statutory change would be to resolve the apparent conflict between the authority conferred upon the various persons and organizations to give the consent to adoption of abandoned children in loco parentis, and the parental notice and hearing procedure required by 58-206 and 58-207. The latter should not be required when abandonment has been judicially determined, or when some person or organization has authority to give consent in loco parentis.

As the law now stands, it should be possible to institute a separate proceeding in the Juvenile Court having as its object a finding and decree that a child has been abandoned. Section 1-703 (a2) of the Wyoming Juvenile Court Act provides:

"The Court shall have jurisdiction in all proceedings instituted therein or transferred to it by order of the District Court con-

9. Comment, 60 Yale L.J. 1240 (1950).

10. *In re Bistany*, 209 App. Div. 286, 204 N.Y.S. 599 (1924).

11. "Intention is the first and paramount object of inquiry; for there can be no abandonment without the intention to abandon." 1 Corpus Juris 6.

cerning any child living or found within the district who is abandoned by his parent or other custodian."

As the above Section points out, the Wyoming Juvenile Court does have jurisdiction where the parent is alleged to have *abandoned* the minor child; however, such jurisdiction does not extend to *adoption* cases. One of the primary reasons for the creation of the juvenile court was to preserve the family group. Such courts have gained a great deal of the necessary knowledge and experience needed in dealing with the problems concerning the parent and child and therefore would seem much better qualified to handle the question of abandonment. Such action brought in the juvenile court is kept within the court, which tends to keep public opinion, due to excessive publicity, from having an unnecessary influence upon the case.

In an abandonment proceeding, would due process of law demand that notice and opportunity to be heard be given to the parents? A Texas case, *D'unger v. Timon*,<sup>12</sup> states by way of dictum that "parental custodial rights come within the protection of the due process clause of the 14th Amendment to the Constitution of the United States and Article I, Section 19, of the Constitution of Texas."

In the case of *Sullivan v. People*,<sup>13</sup> where the parent was charged with having abandoned his child for the space of six years, the lower court found the parent guilty of the charge without giving such parent any notice of an opportunity to be heard. The Supreme Court of Illinois in reversing the lower court decree said:

"A court cannot be clothed with authority to decree that a parent has deserted or abandoned his child and forfeited his rights without notice to him and that to divest his rights without notice and opportunity to be heard is not only contrary to every principle of natural justice but is prohibited by the constitution."

A decree of adoption was held to be of no effect in the case of *Schlitz v. Roenitz*,<sup>14</sup> where the father of the child sought to be adopted had received no notice of the charge of abandonment and no opportunity to be heard. The court said:

". . . due process of law under the 14th Amendment as applied to judicial proceedings, includes a charge of abandonment or whatever the charge may be, and notice to the party in some form, either actual or constructive, and opportunity to appear and produce evidence in his defense by himself or counsel. To proceed to adjudicate in the absence of notice to the party would be contrary to the first principle of the social impact and of the right of the administration of justice."

A New York case, *Re Livingston*,<sup>15</sup> states:

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12. *D'unger v. Timon*, 260 S.W.2d 613 (Tex. 1953).
  13. *Sullivan v. People*, 224 Ill. 468, 79 N.E. 695 (1906).
  14. *Schlitz v. Roenitz*, 86 Wis. 31, 56 N.W. 194, 21 L.R.A. 493 (1893).
  15. *Re Livingston*, 135 N.Y. 328 (1912).



"That to hold that the state may permit its courts to determine, without notice to the parent, that he has forfeited his natural rights to the custody of his child is nothing less than to consent that the powers of the state over the child are, in their nature, legally superior to the natural rights of the parent."

Assuming that notice and opportunity to be heard are indispensable to due process in an abandonment proceeding, it would certainly be more desirable for rather obvious reasons, "to have it out" with the parents in a separate proceeding than to have the issue raised and fought out in an adoption proceeding. The latter should not be complicated by the abandonment issue.

If an abandonment proceeding, including notice to parents, be instituted in the Juvenile Court, a snag might be encountered in the provisions of Section 1-709 of the Wyoming Juvenile Court Act which states as follows:

"Service of orders issued in proceedings hereunder where this statute requires personal service shall be made within three (3) days. If the parent is a non-resident or personal service cannot be had within said three-day period, service shall be had by registered mail to the last known address, but service by publication shall not be permissible. Where the service on the parent cannot be had, and there is no other legal guardian for the child, the court is hereby empowered to appoint a guardian to serve upon terms and for such time as the court shall direct."

As the above Section points out, service by publication cannot be had where the proceeding takes place in the Juvenile Court; and where personal service cannot be had upon the parent within the three day limit, a guardian is appointed and is served. It could hardly be contended that service upon such a guardian, in an abandonment proceeding, would bind a living parent, or constitute the notice and opportunity to be heard essential to due process, since these rights are personal to the parent.

The alternatives would be to amend the Juvenile Court Act to include service by publication, or to provide for an abandonment proceeding in the district court.

The State of Maryland is said to have model adoption statutes. These may be summarized as follows: When a petition requesting adoption of a child is filed with an appropriate Maryland Court, such court may, at its discretion, appoint a child welfare agency or a designated officer of the court to make a thorough investigation of all matters concerning the child, the person petitioning for the adoption, the parents of the child and many other related factors.<sup>16</sup> If, at the end of such investigation, the investigation report contains a recommendation stating that it would be for the "best interest" of the minor child that the petitioner for the adoption of the child should have the custody of the child for a trial period, the court shall, upon a hearing had, pass an interlocutory decree of adoption granting

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16. Md. Ann. Code, Art. 16, sec. 84 (1951).

the petitioner the temporary custody of the child for a limited time period not exceeding one year. The court in the meantime retains jurisdiction of the case and takes such action as in its discretion it may deem to be in the best interests of the child.<sup>17</sup> The legal effect of such interlocutory decree of adoption is that during the trial period the child is to all intents and purposes the child of the petitioner, and the natural parents are divested of all rights with respect to the child.<sup>18</sup> Before the end of the trial period, if the court is satisfied that the best interests of the child will be promoted, the court shall pass a final decree of adoption<sup>19</sup> which has the legal effect of confirming the interlocutory decree.<sup>20</sup>

The advantages of the Maryland system may be summarized as follows:

- (1) The final decree issued by the court is final and binding.<sup>21</sup> An adoption decree which is later upset (as in *Lucas v. Strauser*),<sup>22</sup> works a great hardship upon the child and the adopting parents.
- (2) The controlling element is the welfare of the child rather than any parental right.<sup>23</sup>
- (3) But the rights of the parents are not totally forgotten; as the Maryland adoption statutes point out, before the child can be legally adopted a thorough investigation of all matters is carried out and such investigation includes the rights of the parents. A hearing is also had which also considers the rights of the parents.
- (4) As a Maryland case, *White v. Seward*,<sup>24</sup> points out, the burden of proof is upon the adopting parents to show that the best interests of the child would be promoted by severing its ties from its natural parents.

It is to be noted that the Maryland statutes apparently do not expressly cover the problem of desertion or abandonment. But it is submitted that abandonment could be considered as possibly included within the framework of the Maryland Statutes, along with all other factors involved in an adoption proceedings, since the welfare of the child is made the primary consideration in Maryland adoption proceedings. If a choice must be made between the rights of the parents and the best interests of the

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17. Md. Ann. Code, Art. 16, sec. 85 (1951).

18. Md. Ann. Code, Art. 16, sec. 86 (1951).

19. Md. Ann. Code, Art. 16, sec. 87 (1951).

20. Md. Ann. Code, Art. 16, sec. 88 (1951).

21. "In adoption cases a decree will not be revoked after it is enrolled in the absence of fraud, mistake, surprise or irregularity in its obtention, but it will be considered as final and binding and the court is not thenceforth vested with continuous authority to entertain petitions for a new decree on proof of altered circumstances of either the natural or the adoptive parent." *Faleck v. Chadwick*, 190 Md. 462, 59 A.2d 187 (1948).

22. An adoption decree which had been in effect for two years and two months was declared void by the court after hearing evidence from the natural parent to the effect that the father had not abandoned his children. *Lucas v. Strauser*, 65 Wyo. 98, 196 P.2d 862 (1948).

23. The case was decided on the question as to whether the best interests and welfare of the child would be promoted by the adoption. *Atkins v. Gose*, 189 Md. 542, 56 A.2d 697 (1947-48).

24. *White v. Seward*, 187 Md. 43, 48 A.2d 335, 337 (1946).

child, we submit that the interests of the child should be paramount, even though in extreme cases the neglect of the child is involuntary.

*Summary of Suggested Statutory Changes*

In the light of the foregoing, it is suggested that the following changes be made in the Wyoming Statutes relating to the adoption of abandoned children:

(1) That a statutory definition of what constitutes abandonment be formulated which pertains to all children under 18 years of age, and includes in particular the specification of a minimum period of time beyond which so-called "temporary" abandonment be presumed to be permanent—in order to give the court some encouragement to make a finding of abandonment, and to protect such a finding from the reappearance of parents who suddenly develop the whim to reclaim their children.

(2) That a special proceeding leading to a decree or finding of abandonment or termination of parental rights, based upon notice to parents, and including a hearing, be established.

(3) That Sections 58-206 and 58-207 be amended so as not to apply to:

- (a) Adoptions based on abandonments judically ascertained in proceedings outlined in (2) above, or
- (b) Adoptions in which existing statutes authorize organizations and persons other than parents to consent to the adoption in loco parentis.

(4) That the statutes pertaining to the adoption of orphan children (particularly 58-213 and 58-609[4]) be harmonized and made uniform.

(5) That the words "deserted" in 58-113 and 58-501 be changed to "abandoned", and that the references to abandonment in all existing Statutes be made uniform (e.g., "entirely abandoned" in 58-108, "abandoned children, whose parentage is unknown" in 58-609[4], "abandoning their children, without providing for their support and education" in 58-213).

(6) That the conflict in the definitions of dependent children—at least so far as abandoned children are concerned—set out in 58-606 and 25-101 be resolved.

(7) That there be a declaration of legislative policy to the effect that in an adoption proceeding, the welfare of the child shall be the primary consideration, with consent of the parents as secondary.

ARTHUR F. FISHER

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ENFORCEMENT OF CIVIL LIABILITY FOR NONSUPPORT  
IN THE STATE OF WYOMING

The scope of this article is restricted to a discussion of the civil enforcement of the obligation of parents to support their children when the defaulting parent is still residing in the state of Wyoming or at least has