



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MARR
ATTORNEY GENERAL

Mrs. Violet S. Greenhill, Chief
Division of Child Welfare
State Department of Public Welfare
Austin, Texas

Travis Co.

Dear Mrs. Greenhill:

Opinion No. 2768
Re: Whether or not
Article 606a, Penal
Code, applies in a
situation involving
war refugees.

This department has received your request for an opinion. We quote the pertinent portion of your letter as follows:

"The question has arisen as to whether Vernon's Penal Code, Article 606a, Sections 6 and 7 (See also Vernon's Texas Annotated Civil Statutes, Articles 695a and 695c), relative to the bond requirements for bringing into the State of Texas a child below the age of sixteen years for the purpose of placing him out or for procuring his adoption, applies to refugee children of Europe coming to this country to escape the hazards of war.

"Is, then, the bond required for such children being sent or brought into Texas when assurances have been given, in conformity with the Federal law and in conformity with the policies of the United States Committee for the care of European children, that the children brought to this country will not become a public charge?

"The immediate need for your opinion in this matter has arisen out of a request from a Texas resident visiting in New York. This individual has asked to be advised of the

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formalities required, under Texas law, to bring a refugee child to this State to live in his home for the duration of the War. We are attaching a copy of this letter.
* * *."

The letter to which you refer in the final paragraph of the foregoing, reads:

"A Client of mine, who is a resident of your state, and who is in this city at the present time, is desirous of taking with him a refugee child now in the United States and to give the child a home gratuitously with himself and his family for the duration of the war.

"I would appreciate it very much if you would advise me whether any preliminary formalities must be met with before the child can be made a resident of your state.

"I wish to repeat that the child is now lawfully in America, and my client, out of the kindness of his heart, wants to give him all the necessaries of life, and have the child live with him until he can be sent back to his own parents abroad."

The Acts of 1931, 42nd Legislature, Senate Bill No. 375, Chapter 194, Page 323, created the Division of Child Welfare in the Board of Control and defined its functions as follows:

Sec. 2. "It shall be the duty of the Board to promote through the Child Welfare Division the enforcement of all laws for the protection of defective, illegitimate, dependent, neglected and delinquent children * * * and to take the initiative in all matters involving the interest of such children where adequate provision therefor has not already been made."

Sections 6 and 7 of that Act are incorporated in Vernon's Annotated Penal Code as Article 606a. That Article provides:

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"Art. 606a. Bringing child into state for placing out or adoption without consent of State Board of Control

"Sec. 6. It shall be unlawful for any person, for himself or as agent or representative of another, to bring or send into this State any child below the age of sixteen (16) years for the purpose of placing him out or procuring his adoption without first having obtained the consent of the State Board of Control, which may be made by application directly to the Board of Control, or through the County Child Welfare Board. Said consent shall be given on a regular form to be prescribed by the Board of Control and no person shall bring any such child into this State without such permit and without having filed with the Board of Control a bond payable to the State, on a form to be prescribed by the Attorney General, and approved by the Board, in the penal sum of One Thousand (\$1,000.00) Dollars, conditioned that the person bringing or sending such child into this State will not send or bring any child who is incorrigible or unsound of mind or body; that he will remove any such child who becomes a public charge or pay the expense of removal of such charge, who, in the opinion of the Board of Control, becomes a menace to the community prior to this adoption or becoming of legal age; that he will place the child under a written contract approved by the County Child Welfare Board and the Board of Control; and that the person with whom the child is placed shall be responsible for his proper care and training. Before any child shall be brought or sent into the State for the purpose of placing him in a foster home, the person so bringing or sending such child shall first notify the Board of Control of his intention and the Board of Control shall immediately notify the County Child Welfare Board, who shall make a report to the Board of Control on the person whom it is indicated will have charge of the child, and shall obtain from

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the Board of Control a Certificate stating that such home is, and such person or persons in charge, are in the opinion of the Board of Control, suitable to have charge of such child. Such notification shall state the name, age and description of the child, the name and address of the person to whom the same is to be placed, and such other information as may be required by the Board of Control, and the same shall be sworn to by such person. The Board of Control shall require the person sending said child into this State, or the person who is in charge of the same after he has been brought here, to make a report at certain stated times, and in the event such reports are not made such Board shall be authorized to deport said child from this State and the expenses thereof shall be recovered under said bond; provided, however, that nothing herein shall be deemed to prohibit a resident of this State from bringing into the State a relative or child for adoption into his own family. The Board of Control and Child Welfare Boards shall not allow minors to come into and be brought into this State in violation of this Act.

"Sec. 7 If any person shall bring into this State or direct, conspire, or cause to be brought into or sent into this State any child in violation of the foregoing section, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Twenty-five (\$25.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or by confinement in the County Jail not exceeding twelve months, or by both such fine and imprisonment. Acts 1931, 42nd Leg., p. 323, ch. 194."

The language of Article 606a, supra, is not ambiguous. By the passage of this Act, the Legislature sought to correct an existing evil; namely, the importation of defective, illegitimate, dependent, neglected, or delinquent children into this State by irresponsible persons or agencies. More than frequently, these children became public charges and occasioned an overcrowded condition in our State Institutions. (See Section 14 of the Act).

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The Legislature qualified the application of this statutory provision, however, to those persons or agencies who bring or send children under sixteen (16) years of age into the State for the purpose of "placing them out" or "procuring their adoption." In the instant case, a person desires to bring a refugee child into this State and provide it with all the necessities of life and have the child live with him in his own home until conditions abroad permit the child's return to his rightful parents.

In the described situation, no bond need be made for reason there is neither a "placing out" nor the procurement of an adoption.

In the event there is a "placing out" or the procurement of an adoption, the provisions of Article 606a, supra, must be met and complied with for there is no evident exemption of war refugee children. The Act applies to "any child below the age of sixteen (16) * * *."

We trust that the foregoing answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*
Wm. J. Fanning
Assistant

By *Grandy Williams*
Grandy Williams

GW:RS

APPROVED SEP 30, 1940

George H. Brown
ATTORNEY GENERAL OF TEXAS

