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# The Tennessee Law of Adoption

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# THE TENNESSEE LAW OF ADOPTION

On April 6, 1949, the Tennessee Legislature passed the most comprehensive adoption act in the state's history.[1] The purpose of this Note is to evaluate that statute, bringing up to date the status of the adoption law in the state. Primarily, it is hoped that this Note will be of help to the practicing lawyer; and for this reason, the text has been divided to show separately the procedural and substantive aspects of the law. Of course, the distinctions made are sometimes arbitrary and unnatural. At times natural sequence has been altered for the sake of clarity. But it is hoped that, over all, help may be given in understanding the law as it exists.

While the Note is to be devoted to legal problems, a complete understanding is not possible without consideration being given to the historical development of the psychosocial philosophy of adoptions. An attempt has been made, also, to give a broad, if cursory, outline of the emotional implications of the subject. Lastly, a few broad suggestions are made as to needed further legislation.

## I. Introduction

### A. *Today's Problems and Aims*

Increasingly cast before the eyes of lawmakers and sociologists alike in recent years, has been the "sale of babies;" [2] and this "black market" problem has been the focal point of moves to revise the adoption laws. There no longer is difficulty in finding homes for children; there are thirty applicants for every child placed for adoption.[3] The problem, rather, is in finding suitable homes for the children, by means of proper placement agencies.[4]

The accentuation of suitability has been brought about by a change from thinking of adoption solely in terms of legal relationships such as inheritance rights, to a realization that the state is concerned with the welfare of the child as a participant in the society.[5] There is now a concern for

1. Tenn. Pub. Acts 1949, c. 127. Expression of appreciation is made to Mr. Liberty W. Birmingham III of Jackson, Tennessee, for graciously placing at our disposal his discussion of this act. Mr. Birmingham has been counsel of the Tennessee Department of Public Welfare.

2. Leavy, Law of Adoption Simplified 5 (1948); Note, 23 Wash. L. Rev. 254 (1948); Timmons, The Nashville Tennessean, Dec. 18, 1949, p. 4-B., col. 8.

3. Waldauer, *State Regulation of Child Adoptions,* 17 Tenn. L. Rev. 937 (1943).

4. A study indicates that only 4% of the children adopted in Tennessee from January 1, 1945, through June 30, 1945, were under the direct care of the Department of Public Welfare or licensed agencies, although there were 27 private child-caring institutions and agencies and four maternity homes subject to licensing in the state. McCauley, A Study of Legal and Social Aspects of Adoption in Tennessee, 2, 57 (unpublished thesis in Joint University Libraries, C.D., Nashville, 1947).

5. Hanft, *Thwarting Adoptions,* 19 N.C.L. Rev. 127 (1941); Note, 33 Iowa L. Rev. 678 (1948).

the affectional relationship to be formed by the adoption;[6] and restrictions have been placed on the courts, which sometimes sanctioned adoptions as a matter of course.[7]

In a pamphlet published subsequent to the passage of the new adoption statute by the Tennessee Legislature in 1949, the United States Children's Bureau sets out three objectives in adoption laws: (1) protection for the child from unnecessary separation from its natural parents, from adoption by unfit parents, and from interference by the natural parents after the adoption; (2) protection for the natural parents from making hurried decisions; and (3) protection for the adoptive parents from being given an unfit child and from later disturbances by the natural parents.[8]

"Adoption, in legal contemplation, creates the relationship of parent and child between persons where it is not naturally so existing. . . ." [9] Peck writes that the legal aims (or results) are to give the child the right to bear the adoptive name and a right to the support and care of the adoptive parents, to give the adopting parents a right to the custody and services of the child, and to fix the rights of inheritance among the parties.[10] The courts of Tennessee long have held that the welfare of the child is the paramount consideration.[11]

### B. *History and Nature of Adoption Laws*

Although adoptions were practiced by the Greeks, Romans, Hindus,[12] Babylonians, Assyrians,[13] American Indians,[14] and the Germanic peoples;[15] it was unknown to the common law.[16] Adoption has been recognized in the civil law jurisdictions since earliest times;[17] and some authorities say the common law states borrowed it from the Roman Law;[18] but the value of the Roman Law in considering our own statutes is questionable.[19] Another influence on adoptions were the laws of indenture.[20] While the common law

6. McCauley, *op. cit. supra* note 4, at 77.
7. Note, 26 GEO. L.J. 119 (1937).
8. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 2 (U.S. Children's Bureau Pub. No. 331, 1949).
9. *In re* Knott, 138 Tenn. 349, 355, 197 S.W. 1097, 1098 (1917).
10. PECK, ADOPTION LAWS IN THE UNITED STATES 3 (U.S. Children's Bureau Pub. No. 148, 1925).
11. Magevney v. Karsch, 167 Tenn. 32, 44, 65 S.W.2d 562, 566, 92 A.L.R. 343 (1933); Baskette v. Streight, 106 Tenn. 549, 556, 62 S.W. 142, 144 (1901); *cf.* State v. Paine, 23 Tenn. 523, 535 (1843) (mere custody of the child).
12. MAINE, EARLY LAW AND CUSTOM 97 (1901).
13. LEAVY, LAW OF ADOPTION SIMPLIFIED 1 (1948).
14. RUGGLES AND REDMOND, ADOPTION AND ABANDONMENT OF CHILDREN 10 (1946).
15. Succession of Unforsake, 19 So. 602, 603 (La. 1896).
16. *E.g., In re* Knott, 138 Tenn. 349, 352, 197 S.W. 1097, 1098 (1917); BUCKLAND AND MCNAIR, ROMAN LAW AND COMMON LAW 41 (1936).
17. 1 SCHOULER, DOMESTIC RELATIONS § 719 (6th ed., Blakemore, 1921).
18. PECK, DOMESTIC RELATIONS § 123 (3d ed. 1930).
19. GOODRICH, CONFLICT OF LAWS 446 n.47 (3d ed. 1949).
20. PECK, ADOPTION LAWS IN THE UNITED STATES 2 (U.S. Children's Bureau Pub. No. 148, 1925). Tenn. Priv. Acts 1859, c. 4 set up an orphan asylum for Nashville. By § 3, trustees of the asylum were authorized to have children inmates bound out as apprentices.

states did not recognize adoptions in the absence of statutes, the courts would act in derogation of the father's "right" to the child's custody.[21]

Massachusetts, in 1851, was the first common law state to pass an adoption statute. Tennessee's first statute was passed in 1852.[22] Since that time the Tennessee adoption laws have been altered so as to emphasize social rather than legal values, but there has been no radical change.[23] The process of changing emphasis was carried forward when the 1949 Tennessee Legislature passed: "AN ACT to regulate adoptions in Tennessee; . . . to guarantee a social investigation and supervisory visits to every child adopted; . . . to provide for . . . confidentiality of proceedings; . . . [and] to prevent unauthorized agencies and persons from engaging in child placement. . . ." [24]

Since the inception of adoptive legislation in 1851, statutes in the various states have shown a trend away from thinking of adoption in terms of contractual character.[25] Vernier writes that all jurisdictions in the United States require judicial proceedings for adoptions.[26] But another writer says that agreement, declaration or deed may be the basis; [27] and others write of adoption by estoppel.[28]

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21. State v. Paine, 23 Tenn. 523, 535 (1843). For good discussions of the general history of the laws of adoptions, see Brosnan, *The Law of Adoption*, 22 COL. L. REV. 332 (1922); Quarles, *The Law of Adoption—A Legal Anomaly*, 32 MARQ. L. REV. 237 (1949).

22. Tenn. Pub. Acts 1851-52, c. 338, § 2.

23. The following is a brief chronology of Tennessee statutes directly and indirectly concerning adoption: 1852—Concurrent jurisdiction given to county and circuit courts to grant or refuse adoptions on petition or motion. Pub. Acts 1851-52, c. 338, § 2. 1885—provisions made as to orphan asylums and that parents may be required to consent to adoption. Pub. Acts 1885, c. 92 (§ 3, particularly). Placement of children in an industrial school, with the interest of the child the one consideration. Pub. Acts 1885, c. 15 (§ 2, particularly). 1895—A Board of State Charities instituted to oversee "the whole system of public charities. . . ." Pub. Acts 1895, c. 193, § 2. 1911—Any association or individual, to whom the care of a child has been awarded, given authority to consent to adoption. Pub. Acts 1911, c. 58 § 8. 1915—A Board of Control provided for "penal, reformatory and charitable institutions. . . ." Pub. Acts 1915, c. 20. 1917—Provisions made for the regulation and licensing of child caring agencies, and for court removal of dependent and delinquent children from parents to such institutions and agencies who may consent to adoptions *in loco parentis*. Pub. Acts 1917, c. 120 (§ 5, particularly). 1937—Out-of-state residents permitted to petition for adoption in Tennessee, if the child is placed for adoption by an orphan asylum, charitable institution, or other agency. Pub. Acts 1937, c. 310, § 1. 1939—Provisions for a new birth certificate for an adopted child. Pub. Acts 1939, c. 25. The Tennessee Dep't of Pub. Welfare given authority to inspect as to children placed for adoption. Pub. Acts 1939, c. 95 § 6. 1941—More provisions for a new birth certificate for adopted children. Pub. Acts 1941, c. 23, §§ 25, 26. Requirement that, in adoption proceedings, an agency must file a signed surrender from the parents or guardians or orders from a court. Pub. Acts 1941, c. 151, §§ 1, 3. 1945—Requirement that a clerk of the court must forward a certificate of the decree to the State Registrar within 30 days of the granting of an adoption. Pub. Acts 1945, c. 78, § 45-C. 1949—Pub. Acts 1949, c. 127 (discussed in this Note).

24. Tenn. Pub. Acts 1949, c. 127 (caption).

25. PECK, ADOPTION LAWS IN THE UNITED STATES 4 (U.S. Children's Bureau Pub. No. 148, 1925); 30 MINN. L. REV. 395, 396 (1946). *But cf.* Carnes v. Henderson, 10 Tenn. App. 166, 168-69 (E.S. 1929) (courts may only authorize and sanction adoptions).

26. 4 VERNIER, AMERICAN FAMILY LAWS § 257 (1936).

27. Note, 7 NOTRE DAME LAW. 223, 224 (1932).

28. Limbaugh, *The Adoption of Children in Missouri*, 2 Mo. L. REV. 300, 303 (1937);

There is no provision in the Tennessee statutes for adoption by other means than judicial procedure; and the Tennessee court decisions point away from the recognition of any attempted adoption without such judicial procedure.[29] But it should be noted that while the courts would not decree specific performance of contracts to adopt, they did decree specific performance of those parts of the contracts calling for the leaving of property to the "adopted" child.[30] From these decisions it would seem that allowing inheritance where there are strong equitable grounds is as far as the Tennessee courts will go in recognizing other than formal legal adoptions.

## II. ADOPTION PROCEEDINGS

### A. *Jurisdiction and Venue*

". . . the Chancery, Domestic Relations, Circuit, County and Probate Courts shall have concurrent jurisdiction to authorize the adoption of children." [31]

This provision of the new law in no way changed the law as it existed;[32] rather, it continued the often criticized multiple court jurisdiction.[33]

Mere legal qualifications, or the best of intentions, are no longer considered adequate for courts handling adoptions; there must be a comprehension of principles of child welfare work and services of social agencies.[34] Most adoptions in Tennessee have been handled by the county courts.[35] Are these courts always competent in view of the necessary psychosocial aspects of adoptions? One argument in favor of multi-jurisdiction in adoptions is that it allows for less delay in adoption proceedings. Should delay be avoided at the expense of the most proper facilities?

The Tennessee Legislature has ample authority to fix jurisdiction in one court. While the Assembly does not have power, itself, to pass acts adopting persons, but must give this power to the courts,[36] it may alter the jurisdictions of the courts.[37]

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Note, 47 MICH. L. REV. 962, 969 (1949); 1 BAYLOR L. REV. 199, 201 (1948). As to informal adoptions generally, see LONG, DOMESTIC RELATIONS § 255 (3d ed. 1923).

29. *But cf.* Coonradt v. Sailors, 186 Tenn. 294, 300, 209 S.W.2d 859, 861, 2 A.L.R.2d 880 (1948).

30. Starnes v. Hatcher, 121 Tenn. 330, 117 S.W. 219 (1908); Rogers v. Baldridge, 18 Tenn. App. 300, 76 S.W.2d 655 (M.S. 1934); *In re* Gary's Estate, 211 P.2d 815 (Ariz. 1949) (concerning a contract for adoption made in Tennessee by persons then domiciled in this state). *But cf.* Adcock v. Simon, 2 Tenn. App. 617, 622 (M.S. 1926).

31. Tenn. Pub. Acts 1949, c. 127, § 2.

32. TENN. CODE ANN. §§ 9561, 10324 (Williams 1934).

33. McCauley, *op. cit. supra* note 4, at 44; Note, 22 TULANE L. REV. 323, 324 (1947). As to courts given jurisdiction in other states see, *e.g.*, Clark, *Proposed Changes in Missouri Laws Affecting Children: Recommendations of the Children's Code Commission*, 12 Mo. L. REV. 310, 311-12 (1947); McFarlane, *The Mississippi Law on Adoptions*, 10 MISS. L.J. 239, 241 (1938); Note, 33 IOWA L. REV. 678 (1948).

34. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 11 (U.S. Children's Bureau Pub. No. 331, 1949); Hanft, *Thwarting Adoptions*, 19 N.C.L. REV. 127, 133 (1941).

35. McCauley, *op. cit. supra* note 4, at 32, 33.

36. TENN. CONST. Art. 11, § 6.

37. TENN. CONST. Art. 6, § 8.

The 1949 statute failed to provide for venue of the courts in adoptions. However, existing laws provide that petitions may be received from residents of the county in which the application is made.[38] Application need not be in the county of residence, and out-of-state residents may adopt a child in Tennessee only if the child is placed by an institution or agency.[39] The seriousness of the failure to make wider venue provisions is shown by the two cases of *State* ex rel. *Hardesty v. Sparks*. In the first case,[40] Hardesty petitioned for a writ of habeas corpus for the return of his wife's child, who was being held by the dead wife's family. The court reversed a judgment of the lower court granting an adoption to the wife's family and remanded the case so as to permit the stepfather to file a petition for adoption. After an attempt to adopt in further proceedings, the case came before the Tennessee Supreme Court [41] which held that he could not bring adoption proceedings in Tennessee since he was a nonresident. The court instructed the stepfather to take the child to the state of his residence to effectuate an adoption.[42]

It should be noted in passing that adoptions are separate and distinct proceedings, and a petition for adoption should not be entertained in a divorce case.[43]

### B. *The Petition*

". . . any person or persons wishing to adopt another as his, her or their child, shall apply by petition, signed and sworn to or verified by the applicant or applicants. In the case of application by a married couple, both parties shall sign the petition." [44]

The Tennessee courts already have held that a wife may join her husband in signing the petition for adoption,[45] and the failure to so join may result in the widow of the adopting father being denied the custody of the child.[46]

For the sake of brevity, the contents of the petition will be outlined.

I. The Child
  (1) Full name (the new name may be used here, and the real name given in a supplemental petition);

38. TENN. CODE ANN. § 9561 (Williams 1934); James v. Williams, 169 Tenn. 41, 47, 82 S.W.2d 541, 544 (1935).
39. Tenn. Pub. Acts 1937, c. 310, § 1; TENN. CODE ANN. § 9572.1 (Williams 1934); Bates, *Change of Names, Legitimation, and Adoption*, 19 TENN. L. REV. 418, 422 (1946).
40. 28 Tenn. App. 329, 190 S.W.2d 302 (E.S. 1945).
41. 185 Tenn. 105, 203 S.W.2d 373 (1947).
42. For comparison with jurisdictions with broader venue statutes, see Bamberger, *Adoption in Indiana*, 17 IND. L.J. 225, 229 (1942); Clark, *Proposed Changes in Missouri Laws Affecting Children: Recommendations of the Children's Code Commission*, 12 MO. L. REV. 310, 311-12 (1947); Strahorn, *Changes Made by the New Adoption Law*, 10 MD. L. REV. 20, 22 (1949). But the U.S. Children's Bureau says it is difficult to make an adequate study of the proposed adoptive home unless the petitioners reside within the jurisdiction of the court. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 12 (U.S. Children's Bureau Pub. No. 331, 1949).
43. Grider v. Grider, 182 Tenn. 406, 409, 187 S.W.2d 613, 614 (1945) (however, the court retained the action as an original suit).
44. Tenn. Pub. Acts 1949, c. 127, § 3.
45. Balch v. Johnson, 106 Tenn. 249, 255, 61 S.W. 289, 291 (1901).
46. *See* Baskette v. Streight, 106 Tenn. 549, 555-56, 62 S.W. 142, 144 (1901) (child awarded to the widow on other grounds).

(2) Sex;
(3) Color;
(4) Date of birth;
(5) Place of birth (this not listed in the statute, but included for the purpose of simplifying the correction of the birth certificate);
(6) New name (if not already given);
(7) If possessed of property, description of same.

II. The Applicant(s)
(1) Name;
(2) Age;
(3) Place of residence;
(4) Date and place of marriage (if applicable);
(5) Manner in which the applicant obtained the child;
(6) Period of time in which the child has resided with the applicant;
(7) Reasons for adoption;[47]
(8) Religion (all parties).[48]

III. Agency (if one involved)
(1) Name;
(2) Address.[49]

### C. *Consent and Notice*

". . . before a minor child is adopted, valid written consent must be given. . . ." [50]

The requirement of consent by the natural parents is new to the statute books of Tennessee; [51] there is still no express statutory requirement of notice to the natural parents of the adoption proceedings. But consent and notice have long been required under court decisions.[52] Because of the interrelated nature of consent and notice, chronology will be broken here to consider them together.

In the case of a foundling or an abandoned child whose parentage is unknown, the court may appoint a guardian *ad litem* to give consent to the adoption,[53] or the consent may be given by a judge having proper jurisdiction in the county of the residence of the parties desiring to adopt.[54] Otherwise, and

47. While this particular requirement is not included in the 1949 act, it is provided in TENN. CODE ANN. § 9561 (Williams 1934) and apparently not repealed.

48. While this particular provision is not included in the 1949 act, TENN. CODE ANN. § 4735 (Williams 1934) provides that children *placed out* in private families are to be located with those of the same religious faith as that of the child or the natural parents, as far as is practicable.

49. The contents of this outline, except as noted, are taken from Tenn. Pub. Acts 1949, c. 127, § 3. They vary in some detail from those in Form CW-42, provided by the Tennessee Department of Public Welfare.

50. Tenn. Pub. Acts 1949, c. 127, § 4.

51. In 1936 Tennessee was one of only four states which did not require consent by statute. 4 VERNIER, AMERICAN FAMILY LAWS § 259 (1936).

52. "It could not be thought that the legislature intended that a child should be taken from the custody of either one of its natural parents, unless it was with their consent or made to plainly appear that it was to the interest of the child that it be done. This could not be legally adjudged unless the parents should have notice of the proceeding or voluntarily appear." *In re* Knott, 138 Tenn. 349, 354, 197 S.W. 1097, 1098 (1917).

53. Tenn. Pub. Acts 1949, c. 127, § 4.

54. TENN. CODE ANN. § 4733 (Williams 1934). While there is an obvious difference between the code provision and the 1949 act, the two are not entirely inconsistent; therefore both must be deemed to be in effect.

if there has been no previous judicial termination of parental rights, consent must be given by (1) both parents (or the surviving parent) of a legitimate child; [55] (2) the mother of an illegitimate child; [56] or (3) the legal or natural guardians (if the parents are dead or incapacitated, or the child abandoned and the parents cannot be located).[57] The procedure for consent by the natural parents is provided by Section 4 of the 1949 Act. While the language of the act is ambiguous, it apparently requires that minor parents must give their consent in chambers before a judge empowered to hear adoption eases. Other parents may give their consent by acknowledgment before a notary public, but the mother's acknowledgment must be made privately and apart from the Department of Welfare or the agency involved. Such acknowledgment must be witnessed by two persons not connected with the Department or agency, and it is not competent if made by the mother prior to the birth of the child. If the consent is not given before a judge, the mother may withdraw her consent within thirty days from the date of the birth of the child or the date the mother is discharged from the hospital, whichever is later.[58]

If the parent has consented to the adoption, no notice of the hearing is required.[59] Similarly, the Department or an agency may give the consent, if it has legally accepted guardianship and control of the child by a valid release and surrender from the parents.[60] Presumably, this provision would make notice of the hearing unnecessary in such case.

Where a parent has given neither consent nor surrender, a licensed or chartered child-placing agency may consent to the adoption, if the agency has such authority by order of a court committing the child to the agency, or "under the laws of this State." [61] At this point, it would be well to review the existing laws providing for such consent.[62] In the case of children in orphan asylums, parents may be required to surrender control and to consent to adop-

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55. It is generally agreed that divorce does not terminate the rights of either parent, and the consent of both must be obtained.

56. It should be noted that children are now legitimated in this state by the marriage of the parents, whether such marriage was prior or subsequent to the passage of the act. Tenn. Pub. Acts 1949, c. 70 [amending TENN. CODE ANN. § 9567 (Williams 1934)]. But the act provides that "an estate or interest vested or trust created before the marriage . . . shall not be divested or affected by reason of such child being legitimatized." Presumably, an adoption completed before the marriage would be valid without the consent of the natural father; but it would seem that his consent is necessary if the adoption has not been completed at the time of the marriage.

57. Tenn Pub. Acts 1949, c. 127, § 4.

58. For a discussion of withdrawal of consent by the natural parent, see 32 MINN. L. REV. 496 (1948). The Tenn. Department of Public Welfare has provided two forms for the surrender of children for adoption: Form CW-38 to be used when the consent is given before a judge, and Form CW-39, when before a notary.

59. 1 AM. JUR., *Adoption of Children* § 40 (1936); *see* Redmond v. Wardrep, 149 Tenn. 35, 38, 257 S.W. 394 (1923); *In re* Knott, 138 Tenn. 349, 354, 197 S.W. 1097, 1098 (1917); Matthews v. Whittle, 149 S.W.2d 601, 602 (Tex. Civ. App. 1941).

60. Tenn. Pub. Acts 1949, c. 127, § 4.

61. Tenn. Pub. Acts 1949, c. 127, § 4.

62. The 1949 act repeals only laws in conflict. Tenn. Pub. Acts 1949, c. 127, § 14.

tions; [63] the county judge is empowered to take children from improper homes and place them in the Tennessee Industrial School or in private families; [64] and the juvenile court may award a child to the care of any association or individual, the child becoming the ward of such association or individual, who may be a party to adoption proceedings.[65] Unless the child has been abandoned and its parentage is unknown, there must be consent or notice to the parents either as to the adoption proceeding or any previous judicial proceeding in which the custody of the child has been determined.[66] However, the notice need not be formal;[67] mere constructive notice is usually held to be sufficient.[68] As to the form of notice, adoption proceedings are in courts of record, and notice must be in accordance with the usual practice in such courts.[69] Therefore, when the parents are within Tennessee at a known address, it should be no problem to serve such parents with notice. The problem is most acute when the natural parents are residents of another state. While no cases have been found in point, it seems that notice by publication is customarily used; however, Mrs. Vallie S. Miller, Supervisor of Adoptions for the State Department of Welfare, states that her department attempts to make personal contact with the natural parents by means of welfare departments of the resident states.[70]

"There is a diversity of authority on the question whether adoption proceedings, wherein natural parents were not served with notice, are void or merely voidable." [71] In Tennessee they are only voidable.[72]

If the child to be adopted is 12 or over, he too must give his consent, privately in chambers.[73]

### D. *Other Provisions as to Parties*

". . . any person or persons wishing to adopt another as his, her or their child, shall apply by petition. . . ." [74]

63. TENN. CODE ANN. § 4576 (Williams 1934).
64. TENN. CODE ANN. § 4648 (Williams 1934).
65. TENN. CODE ANN. § 10289 (Williams 1934); State *ex rel.* Jones v. West, 139 Tenn. 522, 201 S.W. 743, Ann. Cas. 1918D 749 (1918). TENN. CODE ANN. §§ 4718-30 (Williams 1934) provide for licensing of child caring agencies by the Secretary of State.
66. Grider v. Grider, 182 Tenn. 406, 187 S.W.2d 613 (1945); *In re* Knott, 138 Tenn. 349, 197 S.W. 1097 (1917); *In re* Hampton's Estate, 55 Cal. App.2d 543, 131 P.2d 565 (1942) (lengthy discussion of notice); 4 VERNIER, AMERICAN FAMILY LAWS § 259, p. 344 (1936); 5 So. CALIF. L. REV. 161 (1931); Notes, 24 A.L.R. 416, 427 (1923), 76 A.L.R. 1077, 1078 (1932); 1 AM. JUR., *Adoption of Children* § 44 (1936).
67. *In re* Knott, 138 Tenn. 349, 354, 197 S.W. 1097, 1098 (1917); 1 AM. JUR., *Adoption of Children* § 39, p. 641 (1936).
68. *See In re* Oddo's Adoption, 186 Misc. 359, 59 N.Y.S.2d 612, 614 (Surr. Ct. 1946); *cf.* Redmond v. Wardrep, 149 Tenn. 35, 37-38, 257 S.W. 394 (1923).
69. *In re* Knott, 138 Tenn. 349, 354, 197 S.W. 1097, 1098 (1917).
70. In a personal interview, Mar. 7, 1950.
71. 2 C.J.S., *Adoption of Children* § 38b (1936).
72. Carnes v. Henderson, 10 Tenn. App. 166, 169-72 (E.S. 1929) (natural mother estopped); *cf.* Fielding v. Highsmith, 152 Fla. 837, 13 So. 2d 208 (1943); *In re* Oddo's Adoption, 186 Misc. 359, 59 N.Y.S.2d 612 (Surr. Ct. 1946).
73. Tenn. Pub. Acts 1949, c. 127, § 4.
74. Tenn. Pub. Acts 1949, c. 127, § 3.

By this section, no limitation is placed on the age or marital status of the person proposing to adopt.[75] However, the petitioning parent(s) must be financially able and morally fit to adopt the child.[76] As far as practicable, children placed in private families are to be located in homes of the same religious faith as the child or the natural parents.[77]

Likewise, there is no age limitation on who may be adopted;[78] adults not only may be adopted, but in their case, any part of the procedure may be waived in the discretion of the court.[79] If the adoptee is a child, he must be suitable for the adoption.[80]

> ". . . no person, corporation or agency, except the Department [of Welfare] or an agency as defined in Section 1 hereof, shall engage in placing children for adoption; and no such person or unauthorized corporation or agency shall be a party to any arrangement between prospective adoptive parents, and natural parents, for the placement of children for adoption. . . ." [81]

This provision is an extension of the restrictions already in existence in earlier statutes.[82] While the section clearly is aimed at unethical practices, the problem arises as to how far an attorney is permitted to aid a client in obtaining the adoption of a child. It is reasonable to assume that the attorney is to take part in the adoption proceeding itself; but query whether he may aid in interviewing a prospective or recent mother or in handling the matter generally before such time as the regular proceedings have been started. The legislature should act to clear up this anomalous situation.[83]

### E. *Investigation*

> ". . . upon the filing of a petition . . . the clerk of the Court . . . shall thereupon notify the State Department of Public Welfare . . . and the agency named in the petition. . . ." [84]

The notice provided by this section is to include duplicate copies of the indices and minutes of the adoption case.[85] The agency, if one is named, or the Welfare Department, must then verify the allegations of the petition and

75. Bates, *Change of Names, Legitimation, and Adoption,* 19 TENN. L. REV. 418, 425 (1946). For restrictions in other jurisdictions, see 4 VERNIER, AMERICAN FAMILY LAWS § 255 (1936).
76. Tenn. Pub. Acts 1949, c. 127, § 6.
77. TENN. CODE ANN. § 4735 (Williams 1934).
78. Tenn. Pub. Acts 1949, c. 127, § 10. See 4 VERNIER, AMERICAN FAMILY LAWS § 256 (1936).
79. Tenn. Pub. Acts 1949, c. 127, § 10.
80. Tenn. Pub. Acts 1949, c. 127, § 6.
81. Tenn. Pub. Acts 1949, c. 127, § 11. The section provides for injunction against such unauthorized acts in addition to the penalties provided by § 13.
82. TENN. CODE ANN. § 4737 (Williams 1934).
83. *Cf.* McCauley, *op. cit. supra* note 4, at 146, 147.
84. Tenn. Pub. Acts 1949, c. 127, § 5.
85. The State Department of Public Welfare has provided Form CW-44 for this purpose.

report its findings to the court in writing. The report is to contain: (1) The reason the natural parents wish to put the child out for adoption; (2) Whether the natural parents have abandoned the child or are unfit to have the child's custody; (3) Fitness of the petitioners for adoption; (4) Physical and mental condition of the child; (5) The reason the petitioners wish to adopt the child; (6) Recommendations of the Department or agency.[86]

Before the adoption is completed, the child must have lived for at least one year in the home of the petitioner; and the agency or department must have visited it in the home at least once in every six months.[87] The report of the investigation must be filed with the court within six months from the date of the filing of the petition, and if the time of the hearing is extended, reports must be made at least every three months.[88]

### F. *Hearing and Decree*

". . . the court shall proceed to a full hearing of the petition in open court or in chambers. . . ." [89]

The provision for hearings in chambers is considered advisable by adoption authorities; in fact, some would require that the hearings be closed to the public.[90] This section also provides for examination of parties in interest and other witnesses under oath, and for adjourning "as the nature of the case may require."

"Upon entry of a final decree in the proceedings under this Act it shall be conclusively presumed that all of the requirements and provisions of this Act shall have been complied with, and said decree shall not be subject to attack except for failure to serve any party with process who is legally entitled thereto under the provisions of law." [91]

This provision of the act is largely a codification of rules generally applied by the Tennessee courts, in language such as follows: "In the absence of anything in the record to impeach the right of such court to determine the question involved, there is a conclusive presumption that it had such right." [92]

86. Tenn. Pub. Acts 1949, c. 127, § 6. The Welfare Department has prepared Form CW-41 for this purpose.

87. Tenn. Pub. Acts 1949, c. 127, § 6.

88. Tenn. Pub. Acts 1949, c. 127, § 5. That there is some opposition to investigations may be seen in Waldauer, *State Regulation of Child Adoptions,* 17 TENN. L. REV. 937, 942 (1943). But see McCauley, *op. cit supra* note 4, at 35.

89. Tenn. Pub. Acts 1949, c. 127, § 5.

90. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 3 (U.S. Children's Bureau Pub. No. 331 1949); Strahorn, *Changes Made by the New Adoption Law,* 10 MD. L. REV. 20, 42 (1949); *cf.* Note, 10 AUST. L.J. 448 (1937).

91. Tenn. Pub. Acts 1949, c. 127, § 7.

92. Magevney v. Karsch, 167 Tenn. 32, 46, 65 S.W.2d 562, 567, 92 A.L.R. 343 (1933); James v. Williams, 169 Tenn. 41, 48, 82 S.W.2d 541, 544 (1935); Crocker v. Balch, 104 Tenn. 6, 9, 55 S.W. 307 (1900); Rogers v. Baldridge, 18 Tenn. App. 300, 313, 76 S.W.2d 655, 663 (M.S. 1934); Carnes v. Henderson, 10 Tenn. App. 166, 170 (E.S. 1929); *cf.* Redmond v. Wardrep, 149 Tenn. 35, 37, 257 S.W. 394 (1923). *But cf.* Bates, *Change of*

Furthermore, "To the extent . . . that the adoption decree secured or protected rights for the minor child, the action of the court in basing such decree on meager pleadings was not even erroneous, much less void." [93] "[W]hen the adoptive parent obtains the decree he asks for and takes the child into his family and treats it as his own, he and those claiming under and through him are estopped to assert that the child was not legally adopted." [94] The decree of adoption "need not recite all the terms of adoption, as the effect of adoption is fixed by the statute." [95] While adoption statutes, in legal effect, generally are held to be in derogation of the common law and are therefore strictly construed,[96] they are not construed strictly as to procedure.[97]

The 1949 Act, like previous adoption statutes, does not mention annulment of decrees. In the absence of any provision therefor, there ean be no annulment of an adoption decree.[98]

### G. *Postadoption Requirements*

"Upon the entry of each and every decree of adoption the clerk of the court shall notify the Department and if an agency handles the adoption also the agency of such adoption decree." [99]

By this section, such notice shall contain (1) the date of the decree; (2) the name of the adoptive parents; and (3) the new name, age, sex and race of the adopted child.

The court clerk must also notify the Division of Vital Statistics, and the agency or the Department of Public Welfare must furnish the State Registrar of Vital Statistics with an affidavit from the adopting parents and a completed certifieate of adoption.[100] The registrar will then issue a supple-

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*Names, Legitimation, and Adoption,* 19 TENN. L. REV. 418, 427 (1946) (if absence of jurisdiction appears on face, decree subject to collateral attack).

93. Magevney v. Karsch, 167 Tenn. 32, 50, 65 S.W.2d 562, 568, 92 A.L.R. 343 (1933); Bates, *supra* note 92, at 418, 429.

94. Rogers v. Baldridge, 18 Tenn. App. 300, 313, 76 S.W.2d 655, 663 (M.S. 1934); Carnes v. Henderson, 10 Tenn. App. 166, 169-72 (E.S. 1929) (natural mother estopped, as well as heirs); Hanft, *Thwarting Adoptions,* 19 N.C.L. REV. 127, 139 (1941) (even where no formal adoption proceeding at all).

95. Crocker v. Balch, 104 Tenn. 6, 9, 55 S.W. 307 (1900).

96. *E.g.,* Taylor v. Taylor, 162 Tenn. 482, 490, 40 S.W.2d 393, 395 (1931); *In re* Knott, 138 Tenn. 349, 353, 197 S.W. 1097, 1098 (1917). *But cf.* Marshall v. Marshall, 25 Tenn. App. 309, 313, 156 S.W.2d 449, 452 (M.S. 1041) (not strictly construed as to right of adopted child to inherit from adopting parent).

97. "The procedure in adoption cases, not being different from the procedure customarily employed in courts of equity and courts of common law, this court has not construed the statutes strictly as to procedure." Magevney v. Karsch, 167 Tenn. 32, 45, 65 S.W.2d 562, 567, 92 A.L.R. 343 (1933); James v. Williams, 169 Tenn. 41, 50, 82 S.W.2d 541, 545 (1935); Hanft, *Thwarting Adoptions,* 19 N.C.L. REV. 127, 152 (1941).

98. Coonradt v. Sailors, 186 Tenn. 294, 299, 209 S.W.2d 859, 861, 2 A.L.R. 2d 880 (1948). But consider the following dictum in the same opinion: "It cannot be doubted that in certain circumstances a court of equity has full authority to set aside decrees of adoption, as where it is plainly for the best interest of the adopted child, or where all parties in interest agree." *Id.* at 300, 209 S.W. at 861.

99. Tenn. Pub. Acts 1949, c. 127, § 7.

100. The Department of Public Welfare has provided Form CW-43 for use as a

mental birth certificate. If the child was born outside Tennessee, the registrar is authorized to forward a certified copy of the certificate of adoption and affidavit to the state of birth for the purpose of making possible a new birth certificate for the child in the adopted name.[101]

". . . it being the directed intent and purpose of the Legislature to throw all possible safeguards around the confidentiality of these records." [102]

This statement marks the tenor of the entire adoption act. Thus, the real name of the child is not to be disclosed when the adoptive name is used in the petition (except as necessary for investigation),[103] when the clerk of the court sends the indices and minutes to the agency,[104] or in the minutes of the court in the decree.[105] Information obtained in the investigation is to be kept confidential, also; [106] but the adoptee, if over 21, may examine the records in the discretion of any chancellor. Penalties are provided for violation of the confidentiality provisions.[107]

## III. LEGAL EFFECT OF ADOPTION

### A. *The Relationship Generally*

". . . from the date thereof such child to all legal intents and purposes will be the child of petitioner or petitioners. . . ." [108]

Despite the language of this provision, the adopted child does not become a member of the adoptive family in all respects. The differences will be developed in this section.

There is language by the courts that "the effect of such adoption is to confer upon the person adopted all the privileges of a legitimate child." [109] However, the court said in *Murphy v. Portrum*,[110] "[t]he differences between adoption and legitimation are marked, and, in some contingencies, far reaching." While a family relationship is established between the child and the

certificate of adoption. This form includes a check list of requirements for the adoption. However, Mrs. Vallie S. Miller, Supervisor of Adoptions, states that the form may be amended. In cases where the child is placed by the Welfare Department, a copy of the decree is expected instead of the certificate of adoption, according to Mrs. Miller.

101. Tenn. Pub. Acts 1949, c. 127, § 8.

102. *Ibid.*

103. *Id.* § 3.

104. *Id.* § 5.

105. § 7 (a sealed supplemental decree will contain the real name).

106. *Id.* § 5.

107. *Id.* § 8.

108. *Id.* § 6; *In re* Knott, 138 Tenn. 349, 355, 197 S.W. 1097, 1098 (1917); Balch v. Johnson, 106 Tenn. 249, 256, 61 S.W. 289, 291 (1901).

109. Meriwether v. Fourth & First Bank and Trust Co., 153 Tenn. 696, 698, 285 S.W. 34 (1925); Redmond v. Wardrep, 149 Tenn. 35, 39, 257 S.W. 394, 395 (1923); Hanft, *Thwarting Adoptions*, 19 N.C.L. REV. 127, 150 (1941); Oler, *Construction of Private Instruments Where Adopted Children Are Concerned*, 43 MICH. L. REV. 705 (1945).

110. 95 Tenn. 605, 609, 32 S.W. 633, 634, 30 L.R.A. 263 (1895).

petitioners, the relationship does not extend to other members of the adoptive family or kin.[111]

To be discussed later is a limitation as to inheritance by the adopting parents from the child.[112] It should be noted that the adopted child has no greater rights than a child born in lawful wedlock;[113] and as to other parties, "Ordinarily the word 'children' does not include adopted children." [114]

### B. *Rights and Duties*

The 1949 statute does not delineate the reciprocal rights and duties between the adoptive parents and the child.[115] According to court decisions, the adopting parents have the same obligations as if they were natural parents.[116] These include duties of care, maintenance, and education; and they are not to be lightly cast aside.[117]

The adoptive parents are entitled to the child's services,[118] and the child cannot recover for them.[119] The adopted child's domicile is that of the adoptive parents.[120] The adoptive parents have a right of action, not only for loss of services, but by the 1949 Act under the wrongful death statutes.[121]

### C. *Inheritance*

> ". . . such adoption shall confer upon the child adopted . . . capacity to inherit and succeed to the real and personal estate of such petitioner or petitioners, as heir and next of kin. . . ." [122]

There is little doubt that an adopted child may inherit from the adopting parent; [123] and children of the adoptee "take the interest in the estate which

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111. Murphy v. Portrum, 95 Tenn. 605, 609, 32 S.W. 633, 634, 30 L.R.A. 263 (1895); Helms v. Elliot, 89 Tenn. 446, 451, 14 S.W. 930, 931, 10 L.R.A. 535 (1890); *see* Marshall v. Marshall, 25 Tenn. App. 309, 313, 156 S.W.2d 449 (M.S. 1941); Craft v. Blass, 8 Tenn. App. 498, 507 (W.S. 1928).

112. Tenn. Pub. Acts 1949, c. 127, § 7.

113. Rogers v. Baldridge, 18 Tenn. App. 300, 314, 76 S.W.2d 655, 663 (M.S. 1934); Bates, *Change of Names, Legitimation, and Adoption,* 19 TENN. L. REV. 418, 425 (1946).

114. 2 SIMES, FUTURE INTERESTS § 415 (1936).

115. That inheritance rights are distinct, see 3 MIAMI L.Q. 448, 449 (1949).

116. *See* Helms v. Elliot, 89 Tenn. 446, 448, 14 S.W. 930, 931, 10 L.R.A. 535 (1890); *cf.* Woodward v. Woodward, 87 Tenn. 644, 658, 11 S.W. 892, 896 (1889).

117. Coonradt v. Sailors, 186 Tenn. 294, 299, 209 S.W.2d 859, 861, 2 A.L.R. 2d 880 (1948); *see* Rogers v. Baldridge, 18 Tenn. App. 300, 314, 76 S.W.2d 655, 663 (M.S. 1934). Enforcement of parental duties is provided by TENN. CODE ANN. §§ 8463, 10307, 11379 and 11386 (Williams 1934).

118. Note that the right to custody and services may arise from a person's being merely *in loco parentis* to the child. Maguinay v. Saudek, 37 Tenn. 146 (1857).

119. Rogers v. Baldridge, 18 Tenn. App. 300, 314, 76 S.W.2d 655, 663 (M.S. 1934).

120. Woodward v. Woodward, 87 Tenn. 644, 11 S.W. 892 (1889).

121. Tenn. Pub. Acts 1949, c. 127, § 7. By Tenn. Pub. Acts 1945, c. 58, § 1, the right of action went to the adoptive parents only if the natural parents were not known. See TENN. CODE ANN. §§ 8236, 8240, 8241 (Williams 1934).

122. Tenn. Pub. Acts 1949, c. 127, § 7 [largely reiterating TENN. CODE ANN. § 9570 (Williams 1934)].

123. *E.g.,* Bass v. Morton, 155 Tenn. 378, 293 S.W. 532 (1927).

their parent would have taken . . . ",[124] but collateral heirs of the adoptee may not inherit from the adoptive parents.[125] An adopted child is included in the pretermitted child statute,[126] and he has the right to administer upon the estate of his adoptive father or mother.[127] However, the adoptee may be disinherited.[128]

An adoption does not preclude the adoptee from inheriting from his natural parents;[129] and a later adoption does not deprive the adoptee of the right to inherit from the first adoptive parents.[130] However, the adoptee does not inherit from others in the adoptive family than the adopting parents.[131]

Adopted persons are "children" of the adopting parents;[132] and the word "issue" includes adoptees;[133] but an adoptee is not included in "bodily heirs."[134]

> ". . . but it shall give the person seeking the adoption no reciprocal rights of inheritance and succession or any interest whatever in the estate of a person adopted, except property acquired by the child after his adoption. . . ."[135]

By former statutes, the adoptive parents were precluded from inheriting from the adoptee,[136] the courts holding there is better right in the natural par-

124. Meriwether v. Fourth & First Bank and Trust Co. 153 Tenn. 696, 699, 285 S.W. 34 (1925); *see* Buntin v. Plummer, 164 Tenn. 87, 89, 46 S.W.2d 60, 61 (1932) (both cases concerning the same adoption); TENN. CODE ANN. § 8134 (Williams 1934).

125. Tenn. Pub. Acts 1949, c. 127, § 7.

126. TENN. CODE ANN. § 8131 (Williams 1934); Marshall v. Marshall, 25 Tenn. App. 309, 314, 156 S.W.2d 449, 453 (M.S. 1941).

127. Redmond v. Wardrep, 149 Tenn. 35, 257 S.W. 394 (1923).

128. Marshall v. Marshall, 25 Tenn. App. 309, 156 S.W.2d 449 (M.S. 1941); *accord*, Rogers v. Baldridge, 18 Tenn. App. 300, 314, 76 S.W.2d 655, 663 (M.S. 1934).

129. "Under our statute the adoption . . . did not cut off her right to inherit from her natural parents . . ." Coonradt v. Sailors, 186 Tenn. 294, 304, 209 S.W.2d 859, 863, 2 A.L.R.2d 880 (1948); see MADDEN PERSONS AND DOMESTIC RELATIONS 363 (1931); 4 VERNIER, AMERICAN FAMILY LAWS § 262 (1936).

130. Coonradt v. Sailors, 186 Tenn. 294, 302-303, 209 S.W.2d 859, 2 A.L.R.2d 880 (1948); *In re* Egley's Estate, 16 Wash. 2d 681, 134 P.2d 943 (1943), 18 WASH. L. REV. 215.

131. Taylor v. Taylor, 162 Tenn. 482, 484, 40 S.W.2d 393, 394 (1931); Murphy v. Portrum, 95 Tenn. 605, 609, 32 S.W. 633, 634, 30 L.R.A. 263 (1895); Helms v. Elliot, 89 Tenn. 446, 451, 14 S.W. 930, 931, 10 L.R.A. 535 (1890); Bates, *Change of Names, Legitimation, and Adoption*, 19 TENN. L. REV. 418, 424 (1946). *But see* Strahorn, *Changes Made by the New Adoption Law*, 10 MD. L. REV. 20, 50 (1949).

132. Baker v. Miller, 137 Tenn. 55, 61, 191 S.W. 527, 528 (1916) (as to inheritance tax). *But cf.* 2 SIMES, FUTURE INTERESTS § 415 (1936): "Ordinarily the word 'children' does not include adopted children. But the exceptions to this proposition are rather important. If the gift is to the testator's own children, adopted children are presumed to be included. That is true whether the children are adopted before or after the will is made. If the gift is to the children of A and the testator knew that A had adopted children when he made the will, then the adopted children are presumptively included. In some jurisdictions the adoption statute is so worded that it has been held that its effect is to make the word 'child' in a will include an adopted child."

133. Craft v. Blass, 8 Tenn. App. 498, 501-07 (W.S. 1928).

134. Balch v. Johnson, 106 Tenn. 249, 253, 61 S.W. 289, 290 (1901). Where a life estate is given to *A* with a remainder "to the heirs of the body," the adopted child could not take with the natural children of *A* as a purchaser. See TENN. CODE ANN. §§ 7599, 7600 (Williams 1934) as to fee tail and the Rule in Shelley's Case.

135. Tenn. Pub. Acts 1949, c. 127, § 7.

136. TENN. CODE ANN. § 9570 (Williams 1934); *See* Bass v. Morton, 155 Tenn. 378, 380, 293 S.W. 532 (1927).

ents.[137] In the 1949 Act, the provision against inheritance by the adoptive parent does not include after-acquired property. Who, then, would have better right to such property, the natural or the adoptive parents? Since there is no express cutting off of the rights of the natural parents, it must be assumed that such natural parent would be entitled to inherit not only previously acquired property, but after-acquired property as well. But if the property came to the child from both or one of the adoptive parents, a remaining adoptive parent would have better claim on equitable grounds.[138] To this extent, the 1949 act changes *Murphy v. Portrum*.[139] It is extremely doubtful that collateral adoptive kin may inherit after-acquired property from the adoptee in view of the fact that the courts of the state have uniformly held that an adopted child does not inherit from such kin.[140] Much clarification of the legislature's intentions is needed in future legislation on the problem of inheritance in adoptions.

### D. *Effect Given to Out-of-State Adoptions*

There is no provision in the Tennessee statutes as to the recognition of adoptions in other states.[141] Generally, three different rules are followed by the various jurisdictions: [1] "adoption has no extra-territorial effect in regard to the inheritance of property. . . . [2] the adoption establishes both the status and the constituent detailed rights of inheritance, which may be neither enlarged nor diminished by the law of the state controlling inheritance. . . . [3] the status and a right of inheritance are set up by the state creating adoption and will be recognized and given effect in other states in so far as they do not violate the public policy of such states, but the detailed rights of inheritance will be given by the laws of the state controlling inheritance."[142] Tennessee follows the third rule.[143]

## IV. Conclusions

In a report to the Tennessee Commission on Children,[144] Mrs. Vallie S.

137. Murphy v. Portrum, 95 Tenn. 605, 610, 32 S.W. 633, 635, 30 L.R.A. 263 (1895). But see 4 Vernier, American Family Laws § 263 (1936).

138. Madden, Persons and Domestic Relations 366 (1931).

139. 95 Tenn. 605, 32 S.W. 633, 30 L.R.A. 263 (1895).

140. *Supra,* note 130.

141. As to jurisdictions with laws requiring recognition of foreign adoptions, see Bamberger, *Adoption in Indiana,* 17 Ind. L.J. 225, 235 (1942); Strahorn, *Changes Made by the New Adoption Law,* 10 Md. L. Rev. 20, 31-32 (1949); Note, 26 Geo. L.J. 119, 129 (1937); 3 Miami L.Q. 448 (1949).

142. Note, 14 Miss. L.J. 269 (1942).

143. Finley v. Brown, 122 Tenn. 316, 327, 123 S.W. 359, 362, 25 L.R.A. (n.s.) 1285 (1909); Bland v. Gollaber, 48 S.W. 320 (Tenn. Chan. App. 1898); *cf.* Smith v. Mitchell, 185 Tenn. 57, 202 S.W.2d 979 (1947). *Contra:* Brown v. Finley, 157 Ala. 424, 47, So. 577 (1908); *cf.* Hood v. McGehee, 237 U.S. 611, 35 Sup. Ct. 718, 59 L. Ed. 1144 (1915) (denial of inheritance not an abridgement of "full faith and credit"). See generally, Goodrich, Conflict of Laws §§ 145-47 (3d ed. 1949); Restatement, Conflict of Laws §§ 142, 143 (1934).

144. Mar. 6, 1950, in Nashville. Reported in the Nashville Banner, Mar. 6, 1950, p. 6-A, Col. 1.

Miller [145] reported that notice of 384 adoption petitions had been given to the welfare department in the six months subsequent to the passage of the 1949 act (Apr. 11, 1949 to Dec. 31, 1949). Of these, 236 were from four urban counties and 148 from rural areas. The department or an agency had handled 125 of the cases, while 259 were placements independent of the department or any agency. Mrs. Miller said that this was a marked reduction in independent placements. Of the 259 independent placements, 77 were petitions by stepparents, 51 by other relatives, 115 by persons unrelated; and relationship in the other 16 cases was unreported.

The welfare department had either refused to recommend or had recommended against adoptions in the following cases: (1) when consent had not been given by a living parent and there was no indication that the natural parent was not suitable; (2) where the adoptive mother had tuberculosis; (3) where the adoptive father was abusive and a chronic alcoholic; (4) where the adoptive mother had three children already, born out of wedlock, was married to her third husband, and worked outside the home; (5) where the adoptive mother was diagnosed by a physician as psychotic; and (6) where the adoptive parents were not financially able to care for the child without state aid. In this last case, custody was already in the proposed adoptive parents, and adoption could have accomplished only the cutting off of state funds.

Without attempting to cover again the material already given, it seems worthwhile to mention further needs as to adoption laws in Tennessee. Perhaps the most important need is a provision for the termination of the rights of the natural parents prior to any adoption process.[146] This feature would prevent the unhappy situation of having to remove the child from a home to which he had become accustomed and would prevent possible harassment of the adoptive home by the natural parents. Termination of the parental rights should be accompanied by a provision for the custody of the child if the adoptive petition is dismissed. He should not be left in the adoptive home.[147] Further provision should be made as to the status of the child on the death of the adopting parents. It has been stated that the natural parent would have the right to the custody of the child in such situation;[148] but there is no statute or court decision as to whether the natural parent would be responsible for the child. The U.S. Children's Bureau also recommends that the legal effects of the adoption decree should be made to relate back to the time of the filing of the petition.[149]

145. Supervisor of Adoptions, Tenn. Dep't of Pub. Welfare.
146. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 19. (U.S. Children's Bureau Pub. No. 331, 1949).
147. *Id.* at 4.
148. *See* Baskette v. Streight, 106 Tenn. 549, 555-56, 62 S.W. 142, 144 (1901).
149. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 20 (U.S. Children's Bureau Pub. No. 331, 1949).

Of course, the only complete answer to these problems, and to problems of inheritance, lies in providing that adoption shall completely end the natural relationship, and that the adoptee be made completely a part of the adoptive family. It is argued that other members of the adoptive family have no voice in the adoption; they likewise have no voice as to natural children. The child's welfare would be bettered by this change; it could not be hurt, since the courts have authority to protect his interests by refusing improper adoptions.

It should be provided that only those experienced in handling children's affairs should determine their legal status—*i.e.,* only one court, the most competent one, should handle adoptions.

One further change is strongly recommended. Related laws should be brought together in one statute with the adoption provisions. This would prevent much of the confusion now existing.

WILLIAM MERLIN