

upon such member becoming a candidate for an office to be voted upon at any primary, general election or special election, except for nomination for or election to membership in any county committee or state committee, such candidacy to be determined by the filing of a petition of nomination duly accepted by such member in the manner provided by law."

It will be noted that the office of Member of a County Board of Elections shall be deemed vacant, upon such Member becoming a candidate for an office to be voted upon at any primary election, except for nomination for or election to membership in any County Committee or State Committee.

The Election Law, R.S. 19:1-1 defines a Primary Election as:

"Primary election" means the procedure whereby the members of a political party in this state or any political subdivision thereof nominate candidates to be voted for at general elections, or elect persons to fill party offices, or delegates and alternates to national conventions."

The candidacy of a County Election Board Member for Delegate to the National Convention is determined by his filing of a Petition of Nomination, duly accepted.

By so doing he thereby vacates his election office and may participate in the Primary Election as a candidate for the Party office of Delegate.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: JOSEPH LANIGAN
Deputy Attorney General

JL:MG

APRIL 11, 1956

THE HONORABLE JOHN W. TRANBURG, *Commissioner*
Department of Institutions and Agencies
State Office Building
Trenton, New Jersey

MEMORANDUM OPINION—P-13

DEAR COMMISSIONER TRAMBURG:

You have advised us that questions have been raised as to possible interpretations of the term "assist in placement" which appears in section 3 of chapter 264 of the Laws of 1953 (N.J.S.A. 9:3-19(A)) and chapter 265 of the Laws of 1953 (N.J.S. 2A:96-6 to 8) and you ask our opinion on the following question: "Does the referral of an unmarried mother or a prospective adopting parent to an approved adoption agency represent assistance in the placement of a child for adoption, or an offering to place a child for adoption, so as to make a physician subject to criminal or civil penalty for so doing?"

You advise that the activities of the physician are confined to rendering advice to an unmarried mother or to a prospective adopting parent that their situation might best be handled by an approved adoption agency and, further, that the physician

might undertake to furnish these individuals with the names of one or more such approved adoption agencies.

It is our opinion and we so advise you that such activity on the part of a duly licensed physician does not constitute an effort on his part to "place, offer to place, or assist in the placement of any child in New Jersey for the purpose of adoption" as contemplated in R.S. 9:3-19, nor does it constitute a violation of N.J.S. 2A:96-6 and 7.

N.J.S.A. 9:3-19(A), which is part of section 3 of L. 1953, c. 264, reads as follows:

"A. No person, firm, corporation, association or agency shall place, offer to place, or assist in the placement of any child in New Jersey for the purpose of adoption, unless such person, firm, corporation, association or agency shall be the natural or adopting parent of the child or shall have been approved for such purpose by the Department of Institutions and Agencies and such approval shall not have been rescinded at the time of placement or offer for placement; provided, however, that this prohibition shall not apply to the placement of a child for the purpose of adoption with a brother, sister, aunt, uncle, grandparent or stepparent of such child. The Superior Court, in an action by the Commissioner of the Department of Institutions and Agencies, shall restrain any party found by the court to have violated this subsection A from any further violation of this subsection."

N.J.S. 2A:96-6 and 7, which were enacted as sections 1 and 2 of chapter 265 of the Laws of 1953, provide as follows:

2A:96-6. "No person, firm, corporation, association, or agency shall place, offer to place, or in any manner assist in the placement of a child in the home of any other person, or persons for the purpose of adoption, other than in the home of a brother, sister, aunt, uncle, grandparent or stepparent of such child, unless such person, firm, corporation, association, or agency shall be the natural or adopting parent of the child, or shall have been approved for such purpose as provided by law. Any person, firm, corporation, association, or agency violating this section shall be guilty of a misdemeanor. L. 1953, c. 265, p. 1779, § 1."

2A:96-7. "No person, including a natural parent or parent by adoption, and no firm, corporation, association or agency, other than an agency approved to place children for adoption as provided by law, shall place, offer to place, or in any manner assist in the placement of a child in the home of any other person or persons for the purpose of adoption and, in so doing, take, receive or pay any money or anything of value, or undertake or discharge any financial obligation, except in connection with the birth and any illness of the child. Any person, including a natural parent or parent by adoption, and any firm, corporation, association or agency, other than an agency approved to place children for adoption as provided by law, violating this section, shall be guilty of a high misdemeanor. L. 1953, c. 265, p. 1779, § 2."

Chapters 264 and 265 of the Laws of 1953 are in *pari materia* and in view thereof the meaning of the words "assist in the placement of any child in New Jersey for the purpose of adoption" is made clear when the statutes are considered together

(*Horowitz v. Reichenstein*, 15 N. J. 6 (1954); *Maritime Petroleum Corp. v. City of Jersey City*, 1 N. J. 287 (1949)).

The unauthorized conduct is not the referral of an unmarried mother or a prospective adopting parent to an approved adoption agency, but rather, the placement or assistance in the placement of a child in the home of any other person or persons for the purpose of adoption other than in the home of a brother, sister, aunt, uncle, grandparent or step-parent of such child by anyone other than the natural or adopting parent of the child or an approved agency.

The activity of the physician described in your question does not constitute placement of a child for adoption but rather, mere reference of interested parties to an agency established for that purpose. The ultimate decision as to the placement of the child for adoption is one to be made by the agency after examination of all factors in the background of the child and the adopting parents and is not to be influenced by the intervention of the physician. He acts only in the capacity of one who seeks full compliance with the law and merely suggests that unmarried mothers and prospective adopting parents utilize the services of an accredited agency to accomplish their objective.

Although we have found no New Jersey case which has dealt specifically with the question raised by you, we do find that the Court of Appeals for the District of Columbia dealt with substantially the same question in the opinion filed by it in *Goodman v. District of Columbia*, 50 A.2d 812 (Mun. Ct. of App. for the Dist. of Col. 1947). In that case the Court had affirmed the conviction of a lawyer for violating the "Baby Brokers' Law", 32 Dist. of Col. Code 1940, sections 781 to 789. The court discussed the provisions of section 785 of the District's Code, which read as follows:

"No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under sixteen years of age in a family home or for adoption.* * *"

After pointing out that the statutory language was aimed not at prohibiting, but rather, at insuring that referrals to approved agencies will be made to protect the children and parents involved "not only from corrupt or irresponsible intermediaries but also from the careless and untrained", the court said, at 50 A.2d 814:

"We think it plain that so long as the lawyer gives only legal advice; so long as he appears in court in adoption proceedings, representing either relinquishing or adopting parents; so long as he refrains from serving as intermediary, go-between, or placing agent; so long as he leaves or refers the placement of children and the arrangements for their placement to agencies duly licensed, he is within his rights under the statute.* * *"

(emphasis supplied)

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: EUGENE T. URBANIAK
Deputy Attorney General