

FORMAL OPINION

reasonably necessary to achieve the desired legislative objectives. *Cammarata v. Essex County Park Commission*, 26 N.J. 404, 411 (1960). It would be unreasonable to assume that hospital policemen could effectively prevent escapes and return wanderers without patrolling the roads adjacent to the hospital property.

For these reasons, you are advised that the jurisdiction of special policemen appointed at State institutions extends to and includes the perimeter roads adjacent to those institutions so long as the exercise of authority on such perimeter roads is consistent with the primary responsibility to preserve institutional order. In addition, special policemen have the incidental authority to patrol the perimeter roads contiguous to those institutions as a necessary means to preserve order on the institution premises and to further the apprehension and return of escapees and wanderers.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 1, 1979

ANN KLEIN, *Commissioner*
Department of Human Services
Capital Place One
222 South Warren Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 20—1979

Dear Commissioner Klein:

The Division of Youth and Family Services has asked for an opinion as to whether it may refuse to process the adoption application of a married couple solely because they have refused to consent in advance to blood transfusions for their children should they become necessary. The applicants are Jehovah's Witnesses and such consent would violate their religious beliefs. It is our opinion that the Division of Youth and Family Services may take into account a refusal to consent to a blood transfusion for a prospective adopted child along with other pertinent factors bearing on the best interests of the child, but a refusal to provide such consent alone should not be determinative of the best interests of the child in all cases.

It is axiomatic that the primary consideration "in awarding custody of a child is the promotion of the best interests and welfare of the child." *In re Adoption of E*, 59 N.J. 36, 45 (1971). N.J.S.A. 9:3-37. Further, it

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is fundamental that determination of the best interests of the child cannot be made "on the basis of speculative and sweeping generalizations." *In re Adoption of E, supra*, 59 N.J. at 56. The decision must be made "in a highly individualistic manner," according to the needs and circumstances of the particular child. *Id.* "Each case is decided on its own facts and circumstances." *Fantony v. Fantony*, 21 N.J. 525, 537(1956).

In identifying the best interests of the individual being considered for adoption, "the paramount considerations are the child's safety, happiness and mental, physical and emotional welfare." *Hoy v. Willis*, 165 N.J. Super. 265, 276 (App. Div. 1978). Any number of factors applicable to these considerations may be relevant to the ultimate evaluation. The income and financial ability to support the child, as well as the living conditions of the prospective adopting family, are important. *See In re Adoption by B*, 63 N.J. Super. 98, 105 (App. Div. 1960). The educational level, work record and marital relationship of those wishing to adopt may be part of the evaluation. *See id.*; *In re Guardianship of B.C.H.*, 108 N.J. Super. 531, 539 (App. Div. 1970). The psychological attachments formed by the child are often of vital importance. *Sorentino v. Family & Children's Society*, 72 N.J. 127 (1976). Questions of ethics and morality, insofar as they relate to the child's well-being, may also play a part in the decision. *In re Adoption of E, supra*, 59 N.J. at 49-50. Religion, too, may be relevant, and "... when coupled with other considerations may be a factor to be weighed by the court in determining the advisability of granting an adoption of a child, that factor barring special circumstances . . . is not and cannot be controlling." *Id.* at 50.

The refusal of prospective adopting parents to consent, in advance, to a blood transfusion for their adoptive child is an insufficient reason to disqualify them from consideration for adoption. The likelihood that a particular child would need a blood transfusion is not great. Moreover, if a blood transfusion should become necessary, a court would exercise its *parens patriae* power to order the transfusion in the best interest of the child. *State v. Perricone*, 37 N.J. 463 (1962), *cert. den.* 371 U.S. 890 (1962); *see John F. Kennedy Memorial Hospital v. Heston*, 58 N.J. 576 (1971). Where a transfusion becomes necessary, then, the State has adequate means at its disposal to protect the child's physical well-being.

On the other hand, the religious practice of the prospective adoptive parents should not always be ignored. It may be considered as a factor in the decision. *See In re Adoption of E, supra*, 59 N.J. at 47-50. The best interests of the child would undoubtedly permit the Division to elect not to place a hemophiliac child for adoption in the home of Jehovah's Witnesses. By the same token, however, the best interests of the child may differ depending on a prior relationship with the adopting parents. For example, a prospective adoptive child may have formed psychological attachments in a foster home which has provided love, guidance and physical well-being. To prohibit an adoption in such a case solely because of a possibility that a blood transfusion may be needed in the future clearly would be inconsistent with the best interests of the child.*

In conclusion, a refusal by Jehovah's Witnesses to consent to provide blood transfusions should not be used by the Division of Youth and Family Services as the sole basis on which to prohibit adoptions by those

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persons. However, a refusal to consent to blood transfusions may be taken into account along with other pertinent factors bearing on the best interests of the child.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JOSEPH M. GORRELL
Deputy Attorney General

* An administrative policy to impose a blanket prohibition on the adoption of children by Jehovah's Witnesses also raises questions under the Freedom of Religion Clause of the First Amendment to the United States Constitution. Since the likelihood or the need for a transfusion is remote and could in any event be ordered by a court, there is some question whether there would be a constitutionally sufficient justification in furtherance of the best interests of the child for such an absolute ban.

October 9, 1979

CHRISTOPHER DIETZ, *Chairman*
New Jersey State Parole Board
Whittlesey Road
Trenton, New Jersey

FORMAL OPINION NO. 21—1979

Dear Chairman Dietz:

On September 1, 1979 the New Jersey Code of Criminal Justice became effective. The Code substantially revises and codifies the State's criminal law and also impacts on the parole process. As a result, you have asked for our advice with regard to the interpretation of N.J.S.A. 2C:43-9(b) and 2C:46-2 insofar as those statutes bear on the parole revocation process under the jurisdiction of the State Parole Board. In particular, you inquire whether N.J.S.A. 2C:43-9(b) prohibits the forfeiture of credit for time served on parole ("street time") and whether the Parole Board has the authority to revoke parole where a parolee has failed to pay a fine in the manner directed by the Board. It is our opinion that the forfeiture of "street time" on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code. The Parole Board however does retain its preexisting authority to revoke parole because of the failure of a parolee to pay a fine.

Prior to the enactment of the Penal Code, N.J.S.A. 30:4-123.24 provided for the forfeiture of "street time" upon the revocation of parole by the Parole Board. This meant an offender, whose parole had been revoked and then reincarcerated, would lose credit against his sentence for all or part of the time spent on parole. The maximum expiration date of the sentence ordinarily would be administratively extended. The specific