

ADOPTION LAWS:

Discussion of Section 9611B, enacted by  
61st General Assembly.

February 16, 1942

2-73

Honorable Wallace V. Coleman  
Secretary and Treasurer  
Circuit Clerks Association  
Hillsboro, Missouri



Dear Sir:

Under date of December 15, 1942, you wrote this  
office requesting an opinion, as follows:

"At a recent meeting of the Circuit  
Clerks Association of Missouri, the  
Clerks went on record to ask your  
office for a legal opinion relative  
to the operation of Section 9611 B  
of the Laws of 1941, as this is a  
troublesome section, especially in  
rural counties where the local at-  
torneys and abstractors are allowed  
free access to the files and records  
in the Circuit Clerk's office.

"I assure you that an opinion from  
you will greatly help the Clerks to  
carry out the intentions of the legis-  
lators regarding this new law."

Section 9611B, Laws of Missouri, 1941, p. 317, re-  
ferred to in your letter, was Committee Substitute for House  
Bill No. 273, and is as follows:

"The files and records of the court  
in adoption proceedings shall not be  
open to inspection, or copy, by any  
person or persons, except upon an  
order of the court expressly permit-  
ting the same."

It will be noted there is no punishment provided for failure to comply with the terms of the Act.

Before proceeding to discuss this Act, it is deemed advisable to call attention to the rule that Acts of the Legislature are presumed to be constitutional, and in this connection the following brief quotation from the case of *City of Springfield v. Smith*, 19 S. W. (2d) 1, l. c. 3, is inserted:

"Both upon principle and authority the Acts of the Legislature are to be presumed constitutional until the contrary is clearly shown; and it is only when they manifestly infringe on some provision of the Constitution that they can be declared void for that reason. In case of doubt every possible presumption, not directly and clearly inconsistent with the language and subject-matter, is to be made in favor of the Constitutionality of the Act." *Hamman v. Gen. Coal & Coke Co.*, 156 Mo. 232, loc. cit. 242, 56 S. W. 1091, 1093; *Miners' Bank v. Clark*, 252 Mo. 20, loc. cit. 30, 158 S. W. 597."

Keeping in mind the foregoing rule, attention is called to the following provisions of the State and Federal Constitutions.

Section 44, Article VI, of the Constitution of Missouri is as follows:

"All judicial decisions in this State shall be free for publication by any person."

This section of the State Constitution has not been construed and applied by the appellate courts of this state, and we find no other state with an identical constitutional provision. Several states have language similar to the above

language, but in some of them the provision is expressly made applicable to the appellate courts only. In other states the laws enacted by the Legislature and the decisions of the courts are made free for publication. We fail to find where the application of any of these provisions has been before an appellate court.

Adoption proceedings are in the juvenile division of the circuit court. Section 9608, Article 1, Chapter 56, R. S. Mo. 1939. And the circuit court is a court of record, and the decision in an adoption case is part of the record. If the above Section 44, Article VI, of the Missouri Constitution applies to all courts, and not to appellate courts only, there might appear to be a conflict of the Act with Section 44, supra, in so far as it would prevent the free publication of the decision of the court in an adoption proceeding by any person, for if the decision could not be seen it could not be published. It might be urged that this section means no charge can be made by the court for permission to publish its decisions, in which event, under Section 9611B, supra, the decision would be free for publication by any person to whom the court should give permission. If Section 44, supra, applies only to the decisions of the appellate courts, as similar sections do in most states, then there could not possibly be a conflict between the Act and the Constitution.

Attention is also called to Subsections 26 and 32 of Section 53, Article IV, of the Constitution of Missouri, which subsections are as follows:

"The General Assembly shall not pass any local or special law:

\* \* \* \* \*

"(26) Granting to any corporation, association or individual any special or exclusive right, privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track:

\* \* \* \* \*

"(32) Legalizing the unauthorized or invalid acts of any officer or agent of the State, or of any county or municipality thereof. In all other cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined, without regard to any legislative assertion on that subject."

It might be possible to raise some question as to the validity of Section 9611B, supra, when considered in connection with these paragraphs.

Attention is also called to Article III of the Constitution of Missouri, which is as follows:

"The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this Constitution expressly directed or permitted."

A question might be raised as to whether or not the enactment of Section 9611B, supra, was an unauthorized attempt of the legislative branch of the government to interfere with the inherent right of the courts to control their records.

And attention is further directed to the Fourteenth Amendment to the Constitution of the United States, which is herein set out:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Only one case in Missouri has been found where a statute in any respect similar to Section 9611B, supra, was before the courts. In the case of *Ex Parte French*, 285 S. W. 513, the Supreme Court had before it Section 11679, R. S. Mo. 1919, as amended by the Laws of 1923, page 222. This section was as follows:

"The bank commissioner, his deputies, clerk, stenographer, each examiner and every employee shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires him to report upon or take special action regarding the affairs of any bank, private banker, savings and safe deposit company or trust company, and except when he is called on as a witness in any criminal proceedings or criminal trial in a court of justice. If any bank commissioner, deputy, clerk, stenographer or examiner shall disclose the name of any debtor of any bank, private banker, savings and safe deposit company or trust company, or anything relative to the private accounts, affairs or transactions of such bank, private banker, savings and safe deposit company or trust com-

pany, or shall disclose any facts obtained in the course of his or their examination of any such bank, private banker, savings and safe deposit company or trust company, except as herein provided, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction, be subject to a forfeiture of his office and the payment of a fine of not less than one hundred dollars, nor more than one thousand dollars, provided, however, that the bank commissioner, his deputies, and each examiner may furnish to the federal reserve board, the federal reserve banks or to examiners duly appointed by the federal reserve board, or the federal reserve banks, the Comptroller of the Currency of the United States, or to examiners duly appointed by him, the clearing houses in the state of Missouri and examiners duly appointed by them, copies of all examinations made, and may disclose to such federal reserve board, federal reserve banks, comptroller of the currency, clearing houses, or examiners, any information with reference to the condition of affairs of state banks or trust companies organized under the laws of this state. And the bank commissioner, his deputies and examiners shall, with respect to all banks, trust companies and savings companies in which state funds are on deposit, furnish to the state treasurer access to reports of all examinations made, of such institutions, and shall, upon request from the state treasurer, disclose to him any information or facts with reference to the condition of the affairs of any such bank, trust company or savings company, obtained in the course of any such examination, which

the state treasurer may desire to know; and the state treasurer, his deputies, clerks and stenographers shall be under the same obligation to keep secret all facts and information thus obtained as is by this section imposed upon the bank commissioner, his deputies, clerks, stenographers and examiners, and for a violation of such duty they shall be deemed guilty of a misdemeanor and subject to the penalty herein provided."

Section 9611B prohibits anyone from seeing the records in adoption cases except by order of the court. Section 11679 prohibited the State Finance Commissioner from divulging information in his office except to certain designated persons.

The court held Section 11679, R. S. Mo. 1919, void in the following language, l. c. 514:

"The section permits the bank commissioner, his deputies and examiners, to furnish information, which they obtain from an examination of a bank, to the federal reserve board, federal reserve banks, the United States Comptroller of the Currency, or their examiners; to clearing houses of the state of Missouri, and their examiners. These are excepted from the restriction which binds him, under penalty, as for a misdemeanor, to reveal to any person the result of such examinations. This feature of the statute is clearly contrary to the equal protection clause of the federal Constitution, and subdivision 26, section 53, of article 4 of the state Constitution. In re Flukes, 157 Mo. 125, loc. cit. 132, 57 S. W. 545, 51 L. R. A. 176, 80 Am. St. Rep. 619; State v. Baskowitz, 250 Mo. loc. cit. 107, 156 S. W. 945, Ann. Cas. 1915A, 477; State v. Walsh, 136 Mo. 400, 37 S. W. 1112, 35 L.R.A. 231; State ex rel. v. C. B. & Q.

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R. R. Co., 246 Mo. 512, 152 S. W. 28. The rule stated by Cooley in his Constitutional Limitations, and quoted several times by this court, governing this principle, is as follows:

"A statute would not be constitutional \* \* \* which should select particular individuals from a class or locality, and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same locality or class are exempt. \* \* \* Every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments.' 157 Mo. 132, 57 S. W. 547."

While it is pointed out certain questions might be raised concerning the validity of the Act, unless some question is raised before a court of competent jurisdiction and the Act shown to be unconstitutional beyond a reasonable doubt, it is a valid Act under the rule that Acts of the Legislature are presumed to be constitutional, and should be obeyed.

In connection with this discussion, it is respectfully suggested that the application of the Act be taken up with the Judge of your Circuit Court by you.

Respectfully submitted

W. O. JACKSON  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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