

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

May 20, 2014

Opinion No. 14-57

Role of DCS in the Selection of an Attorney Under Adoption Assistance Program

**QUESTION**

Does the Department of Children’s Services (DCS) have a proper role in the selection of an attorney by prospective adoptive parents when the adoptive parents will be seeking reimbursement of the attorney’s fee under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008?

**OPINION**

No.

**ANALYSIS**

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (“2008 Federal Act”) amended the eligibility requirements for assistance under the federal Title IV-E Adoption Assistance program, providing incentives to encourage the adoption of children with special needs. *See* 42 U.S.C. § 673. DCS has authority to administer the Title IV-E Foster Care and Adoption Assistance Program. Tenn. Code Ann. § 37-5-106(12). Adoption assistance under this program can include the reimbursement of a one-time adoption expense, medical benefits, and monthly payments. DCS Admin. Policies and Procedures 15.11. The one-time adoption expense for which adoptive parents may be reimbursed may include up to \$1,000 in attorneys’ fees. *Id.* 15.11(N)(5)(a).

But nothing in DCS’s policies and procedures contemplates that DCS would have a role in the selection of the adoptive parents’ attorney, and no provision of federal or State law authorizes it to do so. DCS may not recommend an attorney or other adoption-related service provider to prospective adoptive parents. Tenn. Code Ann. § 36-1-108(d)(2).<sup>1</sup> The 2008 Federal Act does not authorize or require DCS to select the attorney of prospective parents as a requirement for reimbursement of nonrecurring expenses incurred in the adoption of a child with special needs. *See* 42 U.S.C. § 673(a). The only criterion considered for eligibility for reimbursement of

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<sup>1</sup> DCS *is* authorized to collect information regarding persons and entities, including attorneys, employed to assist in the placement of children and to provide such information to prospective parents. Tenn. Code Ann. § 36-1-108(d)(1), (2), (5).

nonrecurring expenses of an adoption, such as legal fees, is whether the child meets the definition of special needs. DCS Admin. Policies and Procedures 15.11(N)(4). Reimbursement of legal expenses will be made upon submission of proper documentation and itemization of expenses once the adoption is final. *Id.* 15.11(O).

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