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1. GUARDIANSHIP—DELINQUENT CHILDREN — COMMITTED BY JUVENILE COURT TO DEPARTMENT OF MENTAL HYGIENE AND CORRECTION — MAY NOT BE TRANSFERRED — CONTINUES UNTIL COMMITMENT ORDER EXPIRES OR IS TERMINATED.
2. EXPENSE FOR CARE—DELINQUENT CHILD COMMITTED TO DEPARTMENT OF MENTAL HYGIENE AND CORRECTION—JUDGE—JUVENILE COURT—MAY OBLIGATE COUNTY FOR EXPENSE AUTHORIZED AND APPROVED —SECTION 2151.36, R. C.
3. COUNTY CHILD WELFARE BOARD—DEPARTMENT OF MENTAL HYGIENE AND CORRECTION — MAY NOT UNDER SECTION 335.16, R. C. ENTER INTO AGREEMENT —CARE AND PLACEMENT OF DELINQUENT WARD OF DEPARTMENT.

## SYLLABUS:

1. The Department of Mental Hygiene and Correction has the exclusive guardianship of delinquent children committed to it by a Juvenile Court, and such guardianship may not be transferred to the Division of Social Administration, Department of Public Welfare, merely with the consent of the committing court, but such guardianship continues until the commitment order expires or is terminated upon application to the committing court as provided in Section 2151.38, Revised Code.

2. A committing Juvenile Court may, under the provisions of Section 2151.36, Revised Code, at the time of commitment, obligate the county for such expenses as are authorized and approved by the Judge of the Juvenile Court for the care of a delinquent child committed to the Department of Mental Hygiene and Correction for placement in a private family home or institution operating under such rules and regulations as are adopted by the department.

3. A county child welfare board may not, under authority of Section 335.16, Revised Code, enter into an agreement with the Department of Mental Hygiene and Correction with respect to the care and placement of a delinquent ward of the department.

Columbus, Ohio, August 15, 1956

John D. Porterfield, M.D., Director  
Department of Mental Hygiene and Correction  
State Office Building, Columbus, Ohio

Dear Sir:

I have before me your letter requesting my opinion on the following questions:

“(1) May the Division of Social Administration, Department of Public Welfare, with the consent of the committing court, receive by transfer from this department the guardianship of delinquent children?”

“(2) May the committing court, from its own funds, finance the care of a delinquent ward of this department in a private family home or institution?”

“(3) May a county child welfare board enter into an agreement with this department with respect to the care and placement of a delinquent ward of this department or with respect to any other matter in the interests of such child?”

In connection with your first question, it should be observed that Section 5119.17, Revised Code, provides:

“Persons sentenced or committed to any institution, division, or place, under the control and management of the department of mental hygiene and correction, are committed to the control, care, and custody of such department. The director of mental hygiene and correction may direct that persons sentenced or committed to the department, or to any institution or place within the department, under the laws of this state shall be conveyed to the appropriate facility or bureau established and maintained by the department, for examination, observation, and classification of the persons so sentenced or committed. A separate facility or bureau shall be used for children and mental patients in making such examination, observation, and classification from that used for persons sentenced or committed under the penal laws.

“When such examination, observation, and classification of such person has been completed by such facility or bureau and a written report thereof filed with the commitment papers, the chief of the division of which such facility or bureau is a part shall assign such person to a suitable state institution or place main-

tained by the state within his division, there to be confined, cared for, treated, trained, and rehabilitated *until released under the order of the court making such sentence or commitment*. If the report of such examination, observation, and classification of such person recommends that he be assigned to an institution or place maintained by the state within another division of the department than one within the division maintaining the facility or bureau making such examination, observation, and classification, then the director of mental hygiene and correction may assign such person to such institution or place, there to be confined, cared for, treated, trained, and rehabilitated *until released under the order of the court making the sentence or commitment of such person*. No person committed by a probate court or a juvenile court shall be assigned to a penal institution.

“Any person sentenced, committed, or assigned to any one of the institutions or places maintained by the department may, by order of the department duly recorded, be transferred to any other institution. No person shall be transferred from a benevolent to a penal institution.” (Emphasis added.)

Section 5119.18, Revised Code, then provides :

“All minors, who in the judgment of the juvenile court require state institutional care and guardianship, shall be wards of the state and shall be committed to the care and custody of the department of mental hygiene and correction, which department thereupon becomes vested with the exclusive guardianship of such minors.”

The language of these sections clearly confines the responsibility for such children to the Department of Mental Hygiene and Correction, and the divisions thereof. This responsibility is exclusive until such time as the court order is terminated or expires.

It should be kept in mind that the Department of Mental Hygiene and Correction is a public body which is established by law. Thus, it has only such powers as the General Assembly has seen fit to grant, together with such powers as are necessarily implied from the powers specifically granted. This proposition is so stated in 32 Ohio Jurisprudence, page 734 :

“It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted.”

It should be noted that Section 2151.38, Revised Code, provides the

mode by which such permanent custody may be terminated. This section provides that such commitments are permanent and that the jurisdiction of the court ceases, except upon application to the court to terminate such permanent custody. The court may then upon such application, "after notice and hearing and for good cause shown," terminate such custody. It is then within the discretion of the court to "make disposition of the matter in whatever manner will serve the best interests of the child."

Thus, it must be held that such interdepartmental transfer as you suggest, cannot be effected merely with the consent of the committing court, but that the original order must be terminated and a new order entered by the court.

In regard to your second question, Section 2151.36, Revised Code, provides for the expenses of a child committed under Sections 2151.01 to 2151.54, Revised Code, and states in pertinent part:

"\* \* \* Any expense ordered by the court for the care, maintenance and education of dependent, neglected, or delinquent children, or for the orthopedic, medical or surgical treatment, or special care of such children under sections 2151.01 to 2151.54, inclusive, of the Revised Code, except such part thereof as may be paid by the state or federal government, shall be paid from the county treasury upon specifically itemized vouchers, certified to by the judge. The court shall not be responsible for any expense resulting from the commitment of children to any home, the administration of child welfare, county child welfare board, certified organization, or other institution, association, or agency, unless such expense has been authorized by the court at the time of commitment."

This section was under consideration in *City of Cleveland v. Gorman*, 87 Ohio App., 36. The court there held that the "plain and evident purpose of the statute" was "to obligate the county for such expenses only as are authorized and approved by the judge of the Juvenile Court," and that authorization by the court at the time of commitment was a condition precedent to accrual of any liability against the county from the commitment of children to any institution.

The court in construing Section 2151.36, *supra*, drew no distinction between a temporary commitment and a permanent one. In the enactment of this section, the court further said that the Legislature had granted to the Juvenile Court an enlarged responsibility for the welfare of neglected, dependent, or delinquent children. Thus, the court may

obligate the county for the care of delinquent children committed by the court but only when such expenses are authorized by the court at the time of commitment and upon specifically itemized vouchers certified by the judge.

Your third question concerns the authority of a county child welfare board to enter into agreements to assist in the care of and placement of delinquent wards of the department. Section 335.16, Revised Code, prescribes the powers of such county child welfare board, and states in pertinent part:

“The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services.

“\* \* \* (B) To enter into agreements with the parent, guardian, or other person having legal custody of any child, *or with the division, another department, or any certified organization within or outside the county*, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any such child, or with respect to any other matter, in the interests of such child, provided the permanent custody of a child shall not be transferred by a parent to the board or department without the consent of the juvenile court.” (Emphasis added.)

This section poses the problem of whether “another department” as used in Division (B) refers to another state department or to another county department of welfare. It is apparent that “division” refers to the division of social administration. It might, therefore, be assumed that “another department” should be read in conjunction with “division” and the use of the term “division” expanded to include the whole of the department of public welfare. Thus, by this forced construction, it could be said that “another department” meant another state department similar to the department of public welfare and would include the department of mental hygiene and correction.

An examination of the history of Section 335.16, *supra*, formerly Section 3070.17, General Code, indicates the inaccuracy of such a construction. Section 3070-17, *supra*, as enacted in 121 Ohio Laws, 538 (543), and effective January 1, 1946, used the term “another department” in the same context. At that time there was no other state department

to which the term could refer in that the department of mental hygiene and correction was not given its present status as a department until 1954, in 125 Ohio Laws, 823.

Thus, it must be held that "another department" refers to another county department of welfare and that a county child welfare board is not given the authority to enter into agreements with the department of mental hygiene and correction to assist in the care and placement of delinquent wards of the department.

Accordingly, and in specific answer to your inquiry, it is my opinion that :

1. The Department of Mental Hygiene and Correction has the exclusive guardianship of delinquent children committed to it by a Juvenile Court, and such guardianship may not be transferred to the Division of Social Administration, Department of Public Welfare, merely with the consent of the committing court, but such guardianship continues until the commitment order expires or is terminated upon application to the committing court as provided in Section 2151.38, Revised Code.

2. A committing Juvenile Court may, under the provisions of Section 2151.36, Revised Code, at the time of commitment, obligate the county for such expenses as are authorized and approved by the Judge of the Juvenile Court for the care of a delinquent child committed to the Department of Mental Hygiene and Correction for placement in a private family home or institution operating under such rules and regulations as are adopted by the department.

3. A county child welfare board may not, under authority of Section 335.16, Revised Code, enter into an agreement with the Department of Mental Hygiene and Correction with respect to the care and placement of a delinquent ward of the department.

Respectfully,

C. WILLIAM O'NEILL

Attorney General