1156.

JUVENILE COURT—WHERE MINOR COMMITTED TO OHIO BOARD OF ADMINISTRATION PURSUANT TO SECTION 1841-1 G. C.—CHILD ASSIGNED TO INSTITUTION FOR FEEBLE MINDED—COUNTY COMMITTING MINOR RESPONSIBLE FOR SUPPORT—MINOR CANNOT BE HELD AT INSTITUTION AFTER HE OR SHE REACHES AGE OF TWENTY-ONE YEARS UNLESS PROBATE COURT COMMITS IN MANNER PROVIDED BY SECTION 1893 G. C.

1. *Where a minor is committed by the juvenile court pursuant to section* 1841-1 *G. C.* (103 *O. L.* 175), *to the care and custody of the Ohio board of administration, as one requiring "state institutional care and guardianship," and said board of administration subsequently assigns said child to the institution for the feeble minded, the county from the juvenile court of which said minor was committed, is responsible for said minor's support while he or she is in said institution for the feeble minded.*

2. *Where a minor is committed by the juvenile court, pursuant to section* 1841-1 *G. C.* (103 *O. L.* 175), *to the care and custody of the Ohio Board of Administration, as one requiring "state institutional care and guardianship," and said board of administration subsequently assigns said child to the institution for the feeble minded, said minor cannot be held at said institution after he or she reaches the age of twenty-one years, unless committed thereto by the probate court in the manner provided by section* 1893 *G. C.* (108 *O. L., Part I,* 553).

COLUMBUS, OHIO, April 16, 1920.

Ohio Board of Administration, Columbus, Ohio.

GENTLEMEN:—I am in receipt of a letter from you soliciting my opinion upon two questions, the first of which may be stated thus:

Where a minor is committed by the juvenile court, pursuant to section 1841-1 G. C. (103 O. L. 175) to the care and custody of the Ohio board of administration, as one requiring "state institutional care and guardianship," and said board of administration, after a period of observation, assigns said child to the instituton for the feeble minded, can the county from the juvenile court of which said minor was committed, be held responsible for said minor's support while he or she is in said institution for feeble minded, or must the cost of the support of said child while in that institution be borne by the state?

Authority for the commitment of minors requiring state institutional care and guardianship to the Ohio board of administration, and for the temporary and permanent assignment of such children after a period of observation as to their mental and physical condition, is found in sections 1841-1, 1841-2, 1841-3 and 1841-4 of the General Code (103 O. L. 175) reading thus:

> "Section 1841-1. 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 Ohio board of administration,' which board thereupon becomes vested with the sole and exclusive guardianship of such minors."
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> "Section 1841-2. The 'The Ohio board of administration' shall provide and maintain a 'bureau of juvenile research,' and shall employ competent persons to have charge of such bureau and to conduct investigations."
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> "Section 1841-3. The 'The Ohio board of administration' may assign

the children committed to its guardianship to the 'bureau of juvenile research' for the purpose of mental, physical and other examination, inquiry or treatment for such period of time as such board may deem necessary. Such board may cause any minor in its custody to be removed thereto for observation and a complete report of every such observation shall be made in writing and shall include a record of observation, treatment, medical history, and a recommendation for future treatment, custody and maintenance. The 'The Ohio board of administration' or its duly authorized representatives shall then assign the child to a suitable state institution or place it in a family under such rules and regulations as may be adopted."

"Section 1841-4. Any minor having been committed to any state institution may be transferred by such 'The Ohio board of administration' to any other state institution, whenever it shall appear that such minor by reason of its delinquency, neglect, insanity, dependency, epilepsy, feeblemindedness, or crippled condition or deformity, ought to be in another institution. Such board before making transfer shall make a minute of the order for such transfer and the reason therefor upon its record, and shall send a certified copy at least seven days prior to such transfer, to the person shown by its records to have had the care or custody of such minor immediately prior to its commitment; provided, that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution."

What through error is also known as section 1841-2 G. C. (103 O. L. 681), and which may possibly make even more apparent the right of the board of administration to transfer a person from one state institution to another, says:

"All persons committed to any institution under the control and management of the Ohio board of administration shall be considered as committed to the control, care and custody of such board. Upon resolution, duly entered upon the minutes of the board, any person committed to one of such institutions may, for reasons set forth in such resolution, be transferred to any other institution; provided that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution."

It would seem that your question is controlled by the provisions of section 1815-12 G. C., amended in 108 O. L. 554, which says:

"The county from which an inmate of an institution for the feeble-minded was committed shall be liable for such inmate's support, provided the same is not paid otherwise as provided by this act. The treasurer of each county shall pay to the treasurer of state, upon the warrant of the county auditor, the amount chargeable against such county for the preceding six months for all inmates therefrom not otherwise supported, upon the presentation of the statement thereof. When any person committed to an institution under the control and management of the Ohio board of administration, other than an institution for the feeble-minded, is transferred or removed, as provided by law by said board of adminisration from such institution to an institution for the feeble-minded, the county from which said person was committed shall be liable for the support of such person while in said institution for the feeble-minded, as hereinabove provided, and to the same extent as if such person had been originally committed from said county to said institution for the feeble-minded."

It will be noticed that the last sentence of said section refers to a person who has been committed to an *institution* under the control and management of the Ohio board of administration (other than an institution for the feeble-minded) and who has been transferred or removed from such *institution* to an institution for the feeble-minded; while in the situation with which your question deals, the minor person has been committed, not to an institution, but to the board of administration direct, under section 1841-1 G. C. (103 O. L. 175). Is this difference material as to the question at hand? It think not, in view of the provisions of section 1841-2 (103 O. L. 681), quoted above, which makes all commitments to any institution under the control and management of the Ohio board of administration, commitments, in legal effect, "to the control, care and custody of such board."

I am therefore of the opinion that in the circumstance presented by your first question the county from the juvenile court of which said minor was committed, is responsible for said minor's support while he is in the institution for the feeble-minded, to the same extent as if said minor had been originally committed from said county to said institution for the feeble-minded.

Your second question is stated by you as follows:

> "It is thought by some that when a minor committed by the court to the board of administration is by them assigned to the institution for the feeble-minded such person can not be held at the institution for feeble-minded after he reaches his majority.
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> It is contended by others that in as much as the commitment to the institution for feeble-minded by the probate court specified no period of detention the presumption is that such case remains until, in the judgment of the superintendent and the board of administration, he is fit to take his place in society, and that the same presumption holds in the case of minors committed by the juvenile court to the Ohio board of administration and by them assigned to the institution for the feeble-minded."

The statement that in the commitment by the probate court of feeble-minded persons to the institution for feeble-minded no period of detention is specified, is correct. By reason of section 1893 G. C., as amended in 108 O. L., Part I, p. 553, feeble-minded persons of any age, whether public charges or not, are admitted to the institution for the feeble-minded upon commitment to the board of administration in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane.

One of the statutes found in the chapter of the General Code relating to commitment to state hospitals for the insane, which by the reference made in section 1893 G. C. becomes applicable to persons committed to the institution for the feeble-minded, is section 1964 G. C., reading thus:

> "On consent and advice of the trustees, the superintendent may discharge any patient from a state hospital for the insane, when he deems such discharge proper and necessary. No patient who in the judgment of the superintendent has homicidal or suicidal propensities shall be discharged. If, in the opinion of the superintendent, the condition of the patient at the time justifies it, he may permit him to go to his home, or leave the institution unattended."

It thus appears that the length of time a feeble-minded person, committed by the probate court, may be confined in the institution for the feeble-minded, is determined by the superintendent of that institution, with the consent and advice

of the board of administration (that board being the legal successors of the "trustees" mentioned in section 1964 G. C.).

The same conclusion can not be reached, however, as to minors committed by the juvenile court to the care and custody of the Ohio board of administration and by said board assigned to the institution for the feeble-minded. Said minors come into the jurisdiction of the board of administration for "state institutional care and guardianship"—a guardianship that is to be of limited duration, namely, until such minors attain the age of twenty-one years. While no statute is found which contains express language relative to the duration of the guardianship of juvenile minors committed to the board of administration, yet the frequency with which the age of twenty-one years is mentioned in the juvenile act and acts *in pari materia,* makes it certain that the board of administration is not to exercise its guardianship past that period. See in this connection the following sections of the General Code: 1643 (108 O. L., Part I, 260), 2083, 2112, 2113, 2116 and 3093 (108 O. L., Part I, 261).

It is true that by reason of the statutes mentioned in answer to your first question, the board of administration has authority to assign or transfer a minor child committed to it by the juvenile court, to the institution for feeble-minded. It can not be said, however, that the action of the board in making such assignment or transfer gives such child the status of a feeble-minded person in the way that such status would be given by the probate court under section 1893 G. C. (108 O. L., Part I, 553. What is done is rather to effect a change of the minor's environment on the theory that the "state institutional care and guardianship" which the board of administration is to render, can best be afforded, because of the minor's mental condition, in the institution for feeble-minded, rather than some other state institution.

When, however, the minor arrives at the age of twenty-one years and his continued detention in the institution for feeble-minded is thought necessary, considerations of due process of law entitle him to his day in court on the question of his mental status at that time. In other words, if in the judgment of the officials of the institution for feeble-minded said minor is, upon his arrival at said age, feeble minded and it is thought that the public good requires his continued confinement in said institution, said minor should be returned to the county of his residence and proceedings had there under section 1893 G. C. for his commitment to the institution for feeble-minded.

In connection with your question, the provisions of section 1841-3 G. C., have not been overlooked. That section says:

> "The board of adminstration acting as a commission of lunacy may adjudge any inmate in any institution under its control, or in any county jail, to be * * * feeble-minded * * * , and may remove such inmate to * * * the institution for feeble-minded * * * ."

Just what the scope of this section is and what the status is of persons proceeded against thereunder, it is unnecessary here to discuss. If the section has any reference at all to minor children who have come into the jurisdiction of the board of administration upon commitment thereto by the juvenile court as children requiring state institutional care and guardianship, I am of the opinion that it should not be construed in such a way as to authorize the detention of such children past the age of twenty-one years.

Respectfully,
JOHN G. PRICE,
Attorney-General.