

the city ordinance which vests the supervision and control of the department of building in the said building commissioner, is repugnant to the provisions of section 4368 G. C., which specifically confers such powers upon the director of public safety.

Arriving at such a conclusion, it logically follows that the city ordinance must give way to the statute, since by legal construction the latter has precedence over the former. You are therefore advised that in the opinion of this department, the powers and duties of the director of public service, relative to the department of buildings, as imposed upon said director by the provisions of section 4368 G. C. may not lawfully be abrogated by an ordinance of the municipality.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2900.

JUVENILE COURT—DEPENDENT CHILDREN TEMPORARILY COMMITTED BY SAID COURT TO BOARD OF STATE CHARITIES—WHEN SAID CHILDREN MAY IN TURN BE PLACED IN HOME OF PARENT BY SAID BOARD—HOW BOARD, CLOTHING AND NECESSITIES PAID FROM COUNTY TREASURY.

1. *Dependent children, temporarily committed by the juvenile court, to the care and custody of the board of state charities (now Department of Public Welfare, Division of Charities), under the provisions of section 1672 G. C. may in turn be placed temporarily in the home of a mother or parent by said board under the provisions of section 1352-3 G. C. for a period of time not to exceed twelve months, subject to the court's approval, when the mother or parent is morally a fit custodian, and the home provided by her is free from evil influences which may be considered detrimental to the child's welfare.*

2. *Under the provisions of section 1352-4 G. C. the amount of board paid for the care of such child, and the expense of providing suitable clothing and personal necessities is chargeable by the board of state charities (now the Department of Public Welfare, Division of Charities) to the county from which such child was committed, and the duty of the county treasurer, upon the warrant of the county auditor to pay such expense, is mandatory.*

COLUMBUS, OHIO, February 25, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

"You are respectfully requested to furnish this department with your opinion as to the legality of the following procedure:

A probate judge acting as judge of the juvenile court takes certain children from their homes and finds them to be dependent under the law; certifies or commits them to the Department of Welfare, formerly the State Board of Charities, from which department they are placed in their own homes in the custody of their parents. The Department of Welfare then

charges to the county under the provisions of section 1532-4 G. C., as amended, 109 O. L. 362, the clothing, board and other necessary supplies furnished them. Mr. Howitt of the Child Welfare Department advises that this practice is growing in the state, and it seems desirable to know at this time whether such procedure is legal."

Section 1642 G. C. provides as follows:

"Such courts of common pleas, probate courts, insolvency courts and superior courts within the provisions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing, encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations, or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years."

Under the provisions of this section, probate courts are given jurisdiction over, and with respect to, delinquent, neglected, and dependent minors, under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected, and dependent children, and are clothed with jurisdiction to hear and determine charges or prosecutions involving the care, protection, education, or comfort of any such minors.

Section 1644 G. C. defines "delinquent child" as follows:

"For the purpose of this chapter, the words 'Delinquent child' includes any child under eighteen years of age who violates a law of this state, or a city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly visits or enters a house of ill repute; or who knowingly patronizes or visits a policy shop or place where any gambling device or gambling scheme is, or shall be, operated or conducted; or who patronizes or visits a saloon or dram shop where intoxicating liquors are sold; or who patronizes or visits a public pool or billiard room or bucket shop; or who wanders about the streets in the night time; or who wanders about railroad yards or tracks, or jumps or catches on to a moving train, traction or street car, or who enters a car or engine without lawful authority, or who uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct; or who uses cigarettes, cigarette wrapper or substitute for either, or cigars, or tobacco; or who visits or frequents any theater, gallery, penny arcade or moving picture show where lewd, vulgar or indecent pictures, exhibitions or performances are displayed, exhibited or given, or who is an habitual truant; or who uses any injurious or narcotic drug. A child committing any of the acts herein mentioned shall be deemed a juvenile delinquent person, and be proceeded against in the manner hereinafter provided."

Section 1645, as amended in 109 O. L. 361, defines "dependent child" as follows:

"For the purpose of this chapter, the words 'dependent child' shall mean any child under eighteen years of age who is dependent upon the public for support; or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who begs or receives alms; or who is given away or disposed of in any employment, service, exhibition, occupation or vocation contrary to any law of the state; who is found living in a house of ill fame, or with any vicious or disreputable persons or whose home, by reason of neglect, cruelty or depravity on the part of its parent, step-parent, guardian or other person in whose care it may be, is an unfit place for such child; or who is prevented from receiving proper education or proper physical, mental, medical or surgical examination and treatment because of the conduct, inability or neglect of its parents, step-parent, guardian or other person in whose care it may be; or whose condition or environment is such as to warrant the state, in the interest of the child, in assuming its guardianship."

It may be noted that a "delinquent child" as defined under section 1644 G. C. above quoted, is one who may be said to be deficient in moral respects, caused by surrounding conditions, while the "dependent child" defined by section 1645 G. C. may be said to be one who is destitute, or whose unfavorable condition in life is caused by poverty. It is also noted, by a careful analysis of the two definitions given these terms by the sections quoted, the term "delinquent child" does not include the child whose deficiency is attributable to poverty, although the section defining "dependent child" does include children deficient by reason of moral causes. In other words, it may be said under such definitions, a "delinquent child" is not a "dependent child," although a dependent child may nevertheless be a "delinquent child."

Under the provisions of section 1645 G. C. quoted, *supra*, any child under eighteen years of age, who is dependent upon the public for support, or who is destitute, homeless or abandoned is a dependent child within the meaning of the provisions of section 1642 G. C., and at this point it may be significantly noted that a child may under the provisions of section 1645 G. C. either have a home, or be homeless, and yet in both cases be dependent upon the public for support.

Section 1653 G. C. provides for the commitment of dependent, or neglected minors by the juvenile court, to institutions or suitable persons, and is as follows:

"When a minor under the age of eighteen years, or any ward of the court under this chapter, is found to be dependent or neglected, the judge may make an order committing such child to the care of the children's home if there be one in the county where such court is held, if not to such a home in another county, if willing to receive such child, for which the county commissioners of the county in which it has a settlement, shall pay reasonable board or he may commit such child to the board of state charities or to some suitable state or county institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it, which embraces within its object the purposes of caring for or obtaining homes for dependent, neglected or delinquent children or any of them, and which has been approved by the board of state charities as provided by law. When the health or condition of the child shall require it, the judge may cause the child to be placed in a public hospital or institution

for treatment or special care, or in a private hospital or institution which will receive it for like purposes without charge. The court may make an examination regarding the income of the parents or guardian of a minor committed as provided by this section and may then order that such parent or guardian pay the institution or board to which the minor has been committed reasonable board for such minor, which order, if disobeyed, may be enforced by attachment as for contempt."

It is observed that this section of the General Code expressly authorizes the commitment of dependent minors to the board of state charities, now the Department of Public Welfare, Division of Charities, or the judge may, among other provisions, make an order committing such minor found dependent, to the care of the children's home if there be one in the county, willing to receive such child, for which the county commissioners of the county in which it has a settlement, *shall pay reasonable board*. It is thought that this section places broad discretion in the juvenile court in the matter of the selection of the place or manner of commitment, and impliedly recognizes the fact of liability of the county for the support and maintenance of its dependent and neglected children.

Section 1672 G. C. provides the procedure when the child or dependent minor is temporarily or permanently committed by the juvenile court, and it is apparent from an examination of the provisions of this section, as well as those contained in section 1643 G. C., that dependent minors so committed by the juvenile court are contemplated as of two classes, to-wit: Those committed for *permanent* care and custody, and those committed for *temporary* care and custody, and the court is required by the provisions of section 1672 G. C. to designate in its award which of said commitments shall obtain. If such dependent child is committed temporarily, it becomes evident that the jurisdiction of the juvenile court is continuing until the minor attains the age of twenty-one years. If, on the other hand, permanent commitment is made, the child, under the provisions of section 1672 G. C. comes under the sole custody and guardianship of the board, the court's jurisdiction in such an event terminating *ipso facto*.

It is also noted by the provisions of this section that if the child is temporarily committed by the juvenile court to an institution, association or state board, the award or commitment shall not be for more than twelve months, and before the expiration of such period the court shall make other disposition of the matter, or re-commit the child in the same manner, and that during such period of temporary care the institution, association or state board to which such child is committed, shall not place it in a *permanent foster home*, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct.

It is understood from information received from Mr. Harry Howett, Director of Child Care, Division of Charities, that the commitments indicated in your question are temporary, and in such connection it may be noted that apparently this section precludes the placement of such dependent child or children by the Board of State Charities (now the Department of Public Welfare), in such permanent homes as are indicated under the provisions of section 1352-3, although not negating the authority to provide suitable and temporary homes for the period of at least twelve months by the provision of contract stipulated in this section.

Attention is invited at this point to section 1352-3 G. C., which reads as follows:

"The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by

the juvenile court. County, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court that court must first consent to such transfer. The board shall thereupon ipso facto become vested with the sole and exclusive guardianship of such child or children. The board shall, by its visitors, seek out suitable, permanent homes in private families for such wards; in each case making in advance careful investigation of the character and fitness of such home for the purpose. Such children may then be placed in such investigated homes upon trial, or upon such contract as the board may deem to be for the best interests of the child, or proceedings may be had, as provided by law, for the adoption of the child by suitable persons. The board shall retain the guardianship of a child so placed upon trial or contract during its minority, and may at any time, if it deem it for the best interest of the child, cancel such contract and remove the child from such home. The board, by its visitors, shall visit at least twice a year all the homes in which children have been placed by it. Children for whom on account of some physical or mental defect it is impracticable to find good, free homes may be so placed by the board upon agreement to pay reasonable board therefor. The board shall provide needed clothing and personal necessities for such children. When necessary any children so committed or transferred to the board may be maintained by it in a suitable place until a proper home is found. So far as practicable children shall be placed in homes of the same religious belief as that held by their parents. The traveling expenses in connection with the placing of such children in homes, the amount of board, if any, and expenses for clothing and personal necessities and for mental, dental and optical examination and treatment shall be paid out of funds appropriated to the use of the board by the general assembly."

This section clearly indicates that the Board of State Charities (now the Department of Public Welfare, Division of Charities), shall, when able to do so, receive as its wards *the dependent or neglected minors* committed to it by the juvenile court. The section does not distinguish as to cases of permanent or temporary committal, but evidently includes both in the phrase above italicized. It is further provided by the section that such board of state charities shall, by its visitors, seek out suitable *permanent* homes in private families for such wards, in each case making in advance careful investigation of the character and fitness of such homes for the purpose, and such children may then be placed in such investigated homes upon trial, or *upon such contract as the board may deem to be for the best interests of the child*. The section also provides:

"The board shall provide *needed clothing and personal necessities* for such children."

It is true, this phrase may be said to refer to such children as have been provided with suitable *permanent homes*, quoted supra. However, it may be as strongly contended that the same refers to the original subject of the section, which is, generally speaking, "*such dependent or neglected minors as may be committed to the juvenile court*." It is also noted that the section provides in an isolated paragraph as follows:

"When necessary any children so committed or transferred to the board, may be *maintained by it in a suitable place* until a proper home is found."

While the wording of this section may not be said to be definitely clear as to distinctions, if indeed any are intended, in cases of temporary and permanent commitments by the juvenile court of dependent children to the Board of State Charities as provided by section 1672 G. C., it is believed, notwithstanding, that a liberal or reasonable construction placed upon the section, confers ample authority upon the Board of State Charities to contract for the boarding and personal maintenance of such dependent children as may be committed to it by the juvenile court. Section 1683 G. C. provides for such liberal construction, and is as follows:

"This chapter shall be liberally construed to the end that proper guardianship may be provided for the child, in order that it may be educated and cared for, as far as practicable in such manner as best subserves its moral and physical welfare, and that, as far as practicable in proper cases, the parent, parents or guardian of such child may be compelled to perform their moral and legal duty in the interest of the child."

Proceeding to the question of the liability of the county for certain expenses incurred by the State Board of Charities in the placing in homes of dependent children committed to it by the juvenile court, section 1352-4 provides as follows:

"The actual traveling expenses of such child and of the agents and visitors of said board shall be paid from the funds appropriated to said board, but the *amount of board, if any, paid for the care of such child and the expense for providing suitable clothing and personal necessities* and for mental, medical, dental and optical examination and treatment *shall be charged* by the Board of State Charities *to the county* from which such child was committed or transferred as provided in section 1352-3. The *treasurer of each county, upon the warrant of the county auditor, shall pay to the treasurer of state the amount so charged upon the presentation of a statement thereof. The sum so received by the treasurer of state shall be credited to the fund appropriated for the purpose of maintaining the child placing work of the board.*"

It is evident that this section of the General Code is mandatory, and imposes upon the treasurer of each county the duty of paying such claims to the treasurer of state upon the warrant of the county auditor and the presentation of a statement of the amount thereof.

It is understood that the procedure indicated in your inquiry contemplates cases of temporary commitments by the juvenile court to the Board of State Charities, (now Department of Public Welfare, Division of Charities) under the provisions of section 1672 G. C., and that such committed dependent children are in time placed by the Board of State Charities in the custody of their own mothers, from whom they were originally taken and pronounced dependent by the juvenile court, and in view of such circumstances it is asked if such a procedure is legal.

It must certainly be conceded that a negative answer should be given, provided the child had been originally taken from its mother or parents, by reason of the parents' moral unfitness or incapacity to properly supervise the conduct of the child, or provide a suitable home for such child by reason of parental delinquency. In this instance, however, the crux of the action is moral delinquency, and the chief motive of the court in the first instance was to remove the child from the evil influences of the mother or parents, and to provide for it a suitable and respectable home elsewhere, and if under such circumstances the child be returned to the mother or parents, the principal aim of the proceeding would be nullified.

In the case of a dependent child, however, it does not necessarily follow that the element of parental delinquency or moral unfitness always obtains, since the child may be dependent upon the public for its support, and yet be under the custody of a mother morally fit and proper to direct supervision over the child. In this event the crux of the action or proceeding may be said to be poverty. It is nowhere stated in the juvenile laws that a dependent child must be placed in the custody of strangers in preference, or to the exclusion of the mother or relatives, and it cannot be concluded within reason that a mother who is morally a fit person to supervise the conduct of her child and provides a respectable home for its shelter, may be excluded from the privileges which a stranger might enjoy, by reason of such filial relationship.

It is thought then to be reasonably concluded that the home of a mother of a dependent child may, when free from parental delinquency or evil influences detrimental to the child's welfare, be considered such a suitable home as is contemplated by the provisions of section 1352-3 G. C. Upon such considerations, therefore, you are advised that in the opinion of this department there can be seen no legal objection to the procedure indicated in your communication.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2901.

GRISWOLD ACT—MATURITIES OF SERIAL BONDS MUST BE ANNUAL MATURITIES DUE ON A DAY FOLLOWING EACH FINAL TAX SETTLEMENT—INTEREST PAYMENTS MAY BE MADE SEMI-ANNUALLY.

Under the Griswold taxation act (H. B. 33), while the maturities of serial bonds issued must be annual maturities due on a day following each final tax settlement, the interest payments upon such serial bonds may be made semi-annually.

COLUMBUS, OHIO, February 25, 1922.

HON. R. H. PATCHIN, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department on section 14, section 2295-12 (Griswold act), 109 O. L., p. 344, the question submitted by you reading as follows:

“Does this section provide the making of semi-annual maturities for bonds issued and must all maturities be annual? Can interest be paid semi-annually or must this likewise be paid annually?”

In your letter you further say:

“If it be true that only annual maturities and annual interest can be now provided for, then a large amount of money will be accumulated in