

to your question, that under the provisions of section 13439-2, General Code, it is the duty of the court to assign counsel for an indigent prisoner. The prosecuting attorney may not in his official capacity oppose the appointment of counsel by the court on the ground that the accused is not indigent, unless requested by the court to investigate the matter and his opposition is a result of such investigation.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2386.

APPROVAL—BONDS OF WELLSTON CITY SCHOOL DISTRICT, JACKSON COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, March 20, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2387.

APPROVAL — BONDS OF VILLAGE OF MURRAY CITY, HOCKING COUNTY, OHIO—\$3,560.00.

COLUMBUS, OHIO, March 20, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2388.

CHILDREN'S HOME—TRUSTEES THEREOF NOT OBLIGATED FOR CARE AND SUPPORT OF MINOR WHERE TEMPORARY COMMITMENT TERMINATED BY SUBSEQUENT ORDER OF JUVENILE COURT.

SYLLABUS:

1. *Under Sections 3093 and 1653 of the General Code, when the commitment of a minor to a children's home is merely temporary and such commitment is terminated by subsequent orders of the juvenile court and there is no further commitment by the juvenile court to the children's home, the trustees of such children's home are no longer obligated to provide for the care and support of such minors.*

2. *Care and support of minors after temporary commitment to a children's home is terminated discussed.*

COLUMBUS, OHIO, March 21, 1934.

HON. PAUL T. KLAPP, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:— I am in receipt of your communication which reads as follows:

“May I please have your opinion upon the following questions which affect the Children’s Home of this county.

1. A child temporarily committed to the Children’s Home by the Juvenile Court of this county ran away from the Home and committed a crime for which he was sentenced to the Boys’ Reformatory at Lancaster. Subsequently this child was paroled and returned to this county by a Parole Officer, at which time he was committed by the Juvenile Court to the custody of a family, since it was thought improper to return him to the home. Shall the Trustees of the Children’s Home now pay for the support and care of said child?

2. A child was temporarily committed to the Children’s Home by the Juvenile Court and was subsequently found to be tubercular. Upon order of the County Health Department the child was removed from said Home and placed with a private family for care, etc., under temporary commitment of the Juvenile Court. Shall the Trustees of the Children’s Home now pay for the care, support and nursing of said child?

3. In regard to the above two statements of fact, if it should be your opinion that the Trustees of the Children’s Home should not pay for the support of either of these children, will you kindly give your opinion as to what Board shall so pay?”

Section 3093, General Code, with reference to the guardianship and control of minors in the Children’s Home, provides in part:

“All wards of a county of district children’s home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the *permanent* care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. The board of trustees may by contract or otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of (for) board, to a competent person, whenever the interests of such child require such an arrangement. Children committed for temporary care or received by arrangement with parent or guardian shall be considered under the custody and control of the trustees *only during the period of such temporary care*, except as hereinafter provided. * * *.” (Italics the writer’s.)

Section 1653, General Code, with respect to the commitment of minors to institutions by the juvenile court, provides inter alia:

“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 objects 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. * * * ."

I call your attention to an Opinion of my predecessor found in Opinions of the Attorney General for 1929, Vol. II, page 1580, which held as disclosed by the first and second branches of the syllabus:

"1. When the Juvenile Court of a county finds a child to be dependent and permanently commits that child to a private institution as provided in Section 1653, General Code, said child thereby becomes the ward of said private institution and the trustees thereof become the guardian of the person of said child.

2. If the said commitment is temporary, the trustees of the institution are the guardian of the person of the child so long as it is permitted to remain in said institution."

Although this opinion had to do with "private institutions", the same result and reasoning is applicable to "children's homes".

At page 1582 of the above opinion, it is stated:

"* * * That is, so long as a child remains in the institution the trustees have exactly the same relationship to such child as to children who have been permanently committed, the difference being, however, that if a child has been permanently committed to the institution, there is no authority for any one to terminate the care afforded by the institution and the institution has full authority over the child thereafter. *However, in temporary commitment the court could terminate that commitment at any time and by terminating the commitment thereby terminate the control of the trustees over the child by virtue of the act of the court. * * **" (Italics the writer's.)

In both of your inquiries, the commitment of the minor by the juvenile court was *temporary*, and the juvenile court terminated the care and custody of the Trustees of such Children's Home by its subsequent orders. It is therefore my opinion, with reference to your first and second inquiries, that since the care, custody and control of the Trustees of the Children's Home was terminated in

both cases by the juvenile court's subsequent orders, the trustees of such home were no longer responsible financially for the care and support of such children after the temporary commitment to such institution was terminated.

Your third question presents a problem of what boards, if any, should pay for the care and support of these children. I shall consider the two cases separately for the purpose of clarity, but I must state that there are not sufficient facts stated to give a categorical answer to either of them.

In the statement of facts presented by your first question, the minor was sentenced and sent by the judge of the juvenile court to the Boys' Industrial School for committing a crime after running away from the Children's Home. With reference to parole from such an institution, the following sections are pertinent:

"Sec. 2091. The board shall establish rules and regulation(s) under which inmates of the school may be allowed to go upon leave of absence until finally discharged. No inmate shall be given leave of absence, discharged or transferred from the school except upon the written recommendation of the superintendent. The board shall designate the number of field officers who may be employed to establish proper supervision over inmates on leave of absence."

"Sec. 2092. The superintendent shall enforce such rules and regulations, and retake any inmate so upon parole. The written order certified by the superintendent shall be sufficient warrant for any officer named therein to arrest and return such inmate to the school. An officer named in the order shall be under duty to arrest and return to the school any paroled inmate named therein."

The case you present states that the miner in question was paroled by the superintendent and returned by the parole officer to the county from which he was committed to such institution. Assuming the jurisdictional question for the purpose of this opinion, the juvenile court then, because of his destitute circumstances and dependency, evidently made a temporary commitment of the minor to the custody of a private family rather than to the Children's Home.

Section 1653, General Code, quoted supra, provides for several distinct forms of commitment by the juvenile court of neglected and dependent minors or wards of the court, which may be summarized as follows:

1. To the care of the children's home, if there be one in the county;
2. If there is no such home in a county, to a similar home in another county;
3. To the board of state charities;
4. To the care of some suitable state or county institution;
5. To the care of some reputable citizen of good moral character;
6. To the care of some training school or an industrial school as provided by law;
7. To the care of some association willing to receive it, which embraces within its objects the purposes of caring for or obtaining homes for dependent or neglected children, or any of them, and which has been approved by the board of state charities as provided by law.

I call your attention to an opinion of my predecessor found in Opinions of the Attorney General for 1922, Vol. I, page 148, which held as disclosed by the syllabus:

"1. Section 1653 G. C. while authorizing commitments by the juvenile court of dependent and neglected children to the care of suitable private individuals of good moral character, makes no provision in such cases for payment by the county commissioners of the board of such committed children.

2. Section 3092 G. C. as amended in 109 O. L. p. 533, confers no authority upon county commissioners to pay the board of neglected and dependent children committed by the juvenile court to the care of private families or individuals in counties where a county children's home is provided."

It is stated at pages 150 and 151 :

"It is noted that the only authority contained in section 1653 G. C. for payment of the committed child's board by the county commissioners, may be found in the phrase 'for which the county commissioners in the county in which it has a settlement shall pay reasonable board.' Judged from the position the phrase occupies as it appears in the opening paragraph of the section, it is concluded that the same may be said to refer only to the optional commitment immediately preceding the phrase, and which is, a children's home in another county, willing to receive such child, and for which the county commissioners of the county in which it has a settlement, shall pay reasonable board. Hence the language of the phrase considered, together with the position it occupies in the section, is thought to indicate the legislative intention of limiting the authority of the county commissioners for the payment of board of such children to those cases where there is no children's home provided in the county of the child's settlement, and commitment is made by the Juvenile Court of such children to a children's home in another county.

An examination of section 3092 G. C. seemingly supports such a conclusion since this section expressly provides for the payment of board by the county commissioners, of such children as may be placed in the care of private families within the county by the juvenile court, in the event that there is no children's home in the county, or, in the event of the abandonment of one previously existing. It would seem therefore that section 1653 G. C. would not furnish the county commissioners with the authority to pay the board of the children committed by the Juvenile Court to the care of private families or individuals, since that contingency is apparently provided for only in those cases where there is no children's home within the county, or in the event of abandonment as previously mentioned. It is not believed moreover, that there is any other statutory provision authorizing the payment of such an expense from the county treasury, and since the board of county commissioners represents the county in respect to its financial affairs, only so far as authority is given it by statute, it can only be properly concluded that a negative answer should be given your first question."

However, Section 1670, General Code, provides in part:

"* * * The Judge of the juvenile court may, with the approval of the board of county commissioners, arrange for the compensation of

individuals for the temporary care of dependent or delinquent children. Such private homes may be used in county which has not provided a detention home, or to supplement the home already provided. In order to have such private homes available for service an agreed monthly subsidy may be paid and a fixed rate per day for care of children actually residing therein. Such subsidy and per diem shall be paid from funds duly appropriated for detention home purposes, or, in case there is no such fund, from the general county fund upon presentation of properly itemized accounts approved by the judge of the juvenile court. All such boarding homes shall be approved in accordance with sections 1352-1 and 1352-6, and the children therein shall be under the supervision of a probation officer of the juvenile court."

Assuming the commitment of the minor by the juvenile court to have been temporary and to an approved boarding home as provided by Sections 1352-1 to 1352-6, the county commissioners have authority to pay for the care and support of such minor.

With reference to the second case presented, where a child temporarily committed to a children's home was subsequently found tubercular and upon order of the County Health Department, was removed and then temporarily committed by the juvenile court to a private family for care, I call your attention to Section 3144, General Code, which provides inter alia:

"* * * The state board of health upon a proper presentation of facts, shall also have authority to order removed to a municipal, county or district hospital for tuberculosis, any person suffering from tuberculosis, when in the opinion of the state or a local board of health, such person is a menace to the public and cannot receive suitable care or treatment at home, provided, however, that such person shall have the right to remove from the state."

Section 1653, General Code, with reference to commitment by the juvenile court, also provides in part:

"* * * 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. * * *"

Section 3143, General Code, provides that the county commissioners may contract with the board of trustees of a district hospital, the county commissioners of a county maintaining a county hospital, or with the proper officer of a municipal hospital, for the care and treatment of residents who are suffering from tuberculosis. That section also authorizes the county commissioners to contract for such care and treatment with an association or corporation incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis, subject to the approval of the State Board of Health.

The General Assembly has made elaborate provisions for institutional care for persons suffering from tuberculosis and I find no express provision authorizing

permanent care by private families.

Sections 3139 to 3147, inclusive, General Code, indicate that the cost for institutional care of indigent tubercular patients is to be granted by the county commissioners. With reference to this aspect of the case, I call your attention to my opinion No. 1518, rendered September 6, 1933, which held as disclosed by the first branch of the syllabus:

“The county commissioners and not the township trustees should render tubercular relief for a person requiring such relief in a sanatorium.”

However, in the particular inquiry you present, the commitment to such approved private home was evidently temporary and since the poor laws should be construed liberally, it is my opinion that by implication from the statutes for the care of tubercular indigents, the county commissioners could pay for their care and support in such approved private families pending commitment to an institution for tubercular patients.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2389.

OFFICES INCOMPATIBLE—CITY TREASURER AND SECRETARY OF
CITY SINKING FUND TRUSTEES IF COMPENSATED AS SECRETARY.

SYLLABUS:

A city treasurer may not at the same time hold the position of secretary of the sinking fund trustees of the same city if he is receiving any compensation as such secretary.

COLUMBUS, OHIO, March 21, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“On January 9, the question was presented to this Department of whether a city treasurer could also act as secretary of the sinking fund trustees, by Mr. Lloyd G. Davis, City Solicitor of Conneaut. We took the position that these two offices were incompatible, and could not be held by one person, and our reply follows:

“We are in receipt of your letter of the 9th inst., inquiring as to the compatibility of the offices of city treasurer and secretary of the city sinking fund trustees.

We have no direct opinion of the Attorney General upon this question, but we call your attention to his opinion No. 3855, found on page 1477 of the 1931 Opinions, the syllabus of which reads as follows:

“Concurrent employment of a village clerk by the village council