

OPINION NO. 71-060

Syllabus:

1. The Ohio Youth Commission can, under Section 5139.42, Revised Code, order any parent to make support payments to it, thus removing the necessity for diverting such payments from the parent or guardian who is receiving them under an order of the domestic relations court.

2. The Ohio Youth Commission can, under Section 5139.43, Revised Code, increase the amount of support without further court order or action.

To: William J. Ensign, Director, Ohio Youth Commission, Columbus, Ohio
By: William J. Brown, Attorney General, October 1, 1971

I have before me your request for my opinion, which reads as follows:

"1. In a case where the parents of a child committed to the Youth Commission are legally separated, and a parent has been ordered to pay support payments, can these payments be diverted to the Youth Commission in order to satisfy Section 5139.41, Revised Code?

"2. Assuming question number one is answered in the affirmative then can the Youth Commission under authority of Section 5139.42 through 5139.45, Revised Code, increase the amount of support without further court order or action?"

Upon the commitment of a child to the Ohio Youth Commission, the Ohio Revised Code clearly defines a parent's obligation to support the child while in the custody of the Youth Commission. Section 5139.41, Revised Code, reads, in part, as follows:

"Whenever any child is permanently committed

to the youth commission, his parents, guardian, estate or the estate of his parents shall be liable for his care and support so long as he resides in an institution under the jurisdiction of the youth commission. * * *

There is also statutory provision for the support of the children of a marriage of divorced or separated parents. Under Section 3109.05, Revised Code, the court to which the question of support is presented has exclusive authority to "* * * order either or both parents to support their children, * * *."

It is well established that a court's jurisdiction over the custody and control of the children of divorced or separated parents is a continuing jurisdiction, and may, on proper application, be invoked to modify orders made in the original proceeding whenever the character and circumstances of the case, or of the parties, require it. Josh v. Josh, 120 Ohio St. 151 (1929). However, in certain instances, such a child may become a ward of the juvenile court and thus the jurisdiction of the domestic relations court may be suspended. Such an instance may be when the Ohio Youth Commission's peculiar power as to custody of a child is invoked by permanent commitment of a child to it by the juvenile court.

When the juvenile court makes a permanent commitment to the Ohio Youth Commission, legal custody of such child rests in the Youth Commission, and it has jurisdiction in all matters concerning the welfare of the child until the child is discharged under the provisions of Section 5139.05 (C), Revised Code. This Section, dealing with the powers of the Commission, states, in pertinent part, as follows:

"* * *When a child has been committed permanently to the commission the commission shall retain legal custody of the child until such time as it divests itself of such custody by discharging the child to the exclusive management, control, and custody of his parent or the guardian of his person, or until the committing court, upon its own motion, or upon the petition of the parent, guardian of the person, or next friend of a child, or upon petition of the commission, terminates such custody, or until such custody is terminated automatically by the child attaining the age of twenty-one years."

"Permanent commitment" is defined in Section 5139.01 (A) (3), Revised Code, as "a commitment which vests legal custody of a child in the youth commission." Section 5139.01 (A) (4), Revised Code, defines "legal custody", insofar as it pertains to the status which is created when a child is permanently committed to the Youth Commission, as:

"* * * [a] legal status wherein the

commission has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control him; the responsibility to provide him with food, clothing, shelter, education, and medical care; and the right to determine where and with whom he shall live; provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities."

Your first question concerns the diversion of child support payments to the Youth Commission. However, an examination of the statutes setting forth the power of the Commission reveals that the Commission has power greater than that necessary merely to divert payments. Section 5139.41, supra, provides, in pertinent part, as follows:

"* * *The juvenile court judge, at the time of making the commitment, shall certify to the commission the names and addresses of parents or guardians liable for such child's support, and shall indicate whether the parents or guardian have agreed or are willing to furnish such support."

Section 5139.42, Revised Code, states, in part, as follows:

"The youth commission shall investigate the financial condition of the families and estates of children committed to it, in order to determine the ability of any family or estate to make payment in whole or in part for the support of the committed child. * * * The Commission shall determine the amount of support to be paid. An order shall be issued to the person or persons liable for such payment, requiring them to pay to the state monthly, quarterly, or otherwise, as may be arranged, such amount as the commission determines."

It is clear that the Youth Commission has very broad power in the area of support. Power is given to the Commission by statute to determine willingness to pay, to investigate family financial conditions, to determine the amount to be paid, and to issue orders for payment to those liable for such payment. The Youth Commission can order any person who is liable for a child's support to make payments to the Commission for that support, and there is no basis for treating married or divorced parents differently. Since the Commission can order any parent to make such support payments directly to it, it is not necessary to divert any payments from either parent to the Commission. Where there is an outstanding order of

the domestic relations court directing a parent to make payments for support of the committed child, such parent should seek relief from the court's order on the basis of the order of the Youth Commission.

In specific answer to your first question, the Ohio Youth Commission can, under Section 5139.42, supra, order any parent to make support payments to it, thus removing the necessity for diverting such payments from the parent or guardian who has been receiving them under the order of the domestic relations court.

Your second question concerns the power of the Ohio Youth Commission to increase the amount of support paid to the Commission without further court order or action. Section 5139.43, Revised Code, which concerns the Commission's power to increase or decrease the amount of support payments, reads as follows:

"The youth commission shall annually determine the ability of a parent, guardian, or estate to pay and the amount that such person shall pay in accordance with section 5139.45 of the Revised Code, and shall have the power, for due cause, to increase or decrease the amount previously ordered paid."

It is clear that under this Section the Youth Commission can increase the amount of support without further court order, since it has been given complete jurisdiction in this area.

In specific answer to your questions, it is my opinion, and you are so advised, that:

1. The Ohio Youth Commission can, under Section 5139.42, Revised Code, order any parent to make support payments to it, thus removing the necessity for diverting such payments from the parent or guardian who is receiving them under an order of the domestic relations court.

2. The Ohio Youth Commission can, under Section 5139.43, Revised Code, increase the amount of support without further court order or action.