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1. WELFARE BOARD, CHILD OF FRANKLIN COUNTY—REQUIRED TO ACCEPT CUSTODY OF CHILDREN COMMITTED TO IT BY FRANKLIN COUNTY DOMESTIC RELATIONS COURT—SECTION 3070-17 G. C.
2. STATE OF OHIO—NOT RESPONSIBLE FOR MENTALLY DEFECTIVE CHILDREN UNLESS COMMITTED TO STATE INSTITUTION BY COURT OF COMPETENT JURISDICTION.
3. PROBATE COURT—WITHOUT AUTHORITY ON ITS OWN MOTION TO INQUIRE INTO QUESTION OF MENTAL ILLNESS—AFFIDAVIT REQUIRED TO BE FILED TO INVOKE JURISDICTION OF COURT—SECTION 1890-23 OR 1890-111a G. C.

## SYLLABUS:

1. The Child Welfare Board of Franklin County is required, by virtue of Section 3070-17, General Code, to accept custody of children committed to it by the Franklin County Domestic Relations Court.

2. The State of Ohio is not responsible for mentally defective children unless such children have been committed to a state institution by a court of competent jurisdiction.

3. The Probate Court is without authority to inquire into the question of mental illness on its own motion. To invoke the jurisdiction of the Probate Court, an affidavit is required to be filed pursuant to Section 1890-23 or Section 1890-111a of the General Code.

Columbus, Ohio, December 14, 1949

Hon. Ralph J. Bartlett, Prosecuting Attorney  
Franklin County, Columbus, Ohio

Dear Sir:

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

“The Franklin County Domestic Relations Court has been asked on numerous occasions to accept as dependent wards, for commitment to the Child Welfare Board, mentally defective children who are actually dependent children, but who need special-

ized care by an institution or foster home equipped to handle mental defectives.

“In the past, the court has accepted these defective dependents and has committed them to the Child Welfare Board.

“Recently a representative of the Child Welfare Board has inquired whether the law which defines the powers and duties of the Child Welfare Board makes it mandatory for the Child Welfare Board to accept these commitments.

“Are not such children, regardless of age, actually the responsibility of the State of Ohio, rather than of the county in which they reside?

“If they are the responsibility of the state, isn't the county probate court required to accept wardship and to provide for their care until such time as the state accepts responsibility?”

Section 1532, General Code, provides for the Domestic Relations Court of Franklin County with certain prescribed duties. Said section reads in part as follows:

“\* \* \* Such judge shall exercise the same powers and have the same jurisdiction as is provided by law for judges of the court of common pleas. Such judge \* \* \* shall \* \* \* be \* \* \* designated as a judge of the court of common pleas, division of domestic relations, and all the powers provided for in Title 4, Chapter 8, of the General Code (§1639 et seq.) or elsewhere in said Code, relating to juvenile courts shall be exercised in Franklin County by such judge of said court of common pleas, \* \* \* there shall be assigned to said judge \* \* \* all cases under the juvenile court act, \* \* \* .”

Section 1639-1 of the General Code defines:

“The words ‘judge,’ ‘judge of the juvenile court,’ ‘juvenile judge’ or ‘juvenile court,’ used in this chapter or under the laws of this state, shall be construed to mean the judge or the court exercising the powers and jurisdiction conferred in this chapter.

“The word ‘child’ includes any child under eighteen years of age, except that wherever reference is made in this chapter to a crippled or otherwise physically handicapped child the word ‘child’ shall include any person under twenty-one years of age.

“(a) The word ‘adult’ includes any person eighteen years of age, or over, who is not a ‘child’ within the meaning of this act.

“(b) The term ‘board’ shall mean a county child welfare board. \* \* \*”

Section 1639-4, General Code, defines "dependent child" as one :

"1. Who is homeless or destitute or without proper care or support, through no fault of its parents, guardian or custodian.

"2. Who lacks proper care or support by reason of the mental or physical condition of its parents, guardian or custodian.

"3. Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming its guardianship."

Section 1639-16 of the General Code provides in part :

"(a) The court shall have exclusive original jurisdiction under this chapter or under other provisions of the General Code :

"1. Concerning any child who is \* \* \* dependent \* \* \*.

"2. To determine the custody of any child not a ward of another court. \* \* \*"

Section 1639-30, General Code, provides in part :

"\* \* \* If the court shall find that the child is delinquent, neglected or dependent, it may by order duly entered proceed as follows: \* \* \*

"2. Commit the child temporarily or permanently to the division of social administration of the state department of public welfare, or to a county department, board or certified organization, or to any institution or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment or placement, required in the particular case. \* \* \*"

Section 1639-34, General Code, provides :

"When a child has been committed as provided by this chapter, the court may make an examination regarding the income of the parents or guardian or person charged with its support, and may then order that such parent or guardian or person pay for the care, maintenance and education of such child, and for expenses involved in providing orthopedic, medical or surgical treatment or special care of such child. The court shall have power to enter up judgment for the money due and to enforce such judgment by execution as in the common pleas court. Provided, however, that whenever a child which has a legal settlement in another county comes within the jurisdiction of the court, the court may certify such case to the court of the county of legal settlement exercising the powers and jurisdiction conferred in this chapter for further proceedings, and such court shall thereafter

proceed as if the original complaint had been filed in said court.

“Any expenses incurred for the care, support, maintenance, education or medical or surgical treatment or special care of a child, which has a legal settlement in another county, shall be at the expense of the county of legal settlement, if the consent of the judge of the court exercising the powers and jurisdiction conferred in this chapter, of the county of legal settlement is first obtained. When such consent is obtained, the county commissioners of the county in which such child has a legal settlement, shall reimburse the committing court for such expense, out of its county general fund. If the state department of public welfare deems it to be in the best interest of any delinquent, dependent or neglected child which has a legal settlement in a foreign state or country, that such child be returned to the state or country of legal settlement, such child may be committed to the department for such return.

“Any expense ordered by the court for the care, maintenance and education of dependent, neglected or delinquent children, or for orthopedic, medical or surgical treatment or special care of such children under the provisions of this chapter, 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 of the court. The court shall not be responsible for any expense resulting from the commitment of children to any home, county department, board, certified organization, or other institution, association, or agency, unless such expense has been authorized by the court at the time of commitment.”

Section 1639-35, General Code, provides as follows:

“When a child is committed to the boys’ or girls’ industrial school, or to the Ohio state reformatory, or to the permanent custody of the state department of public welfare, the division of social administration in said department, a county department, board or certified organization, the order shall state that such commitment is permanent and the jurisdiction of the court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the division of any county department, board or certified organization having such permanent custody make application to the court for the termination of such custody, the court upon such application, after due notice and hearing and for good cause shown, may terminate such custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. All other commitments made by the court shall be temporary and shall continue for such period as

designated by the court in its order, or until terminated or modified by the court, or until a child attains the age of twenty-one years.”

It is apparent from your letter that the jurisdiction of the domestic relations court had been invoked by virtue of the provisions of law relating to dependent children and that the court, pursuant to said law, properly acted in the premises. However, you did not state whether or not such commitment to the child welfare board was temporary or permanent. Regardless, the child welfare board has the right, pursuant to Section 1639-35, supra, to make application to said court for termination or modification of its order.

Section 3070-17 of the General Code provides in part:

“The child welfare board shall \* \* \* have the following powers and duties \* \* \* :

“(c) To accept custody of children committed to the board by a court exercising juvenile jurisdiction.

“(d) To provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service. Such care shall be provided by the board by its own means or through other available resources, in such child’s own home or in the home of a relative or in a certified foster home, receiving home, school, hospital, convalescent home or other institution, public or private, within or outside the county or state. \* \* \* ”

In the case of Paddock, Appellee, v. Ripley, et al., Appellants, 149 O. S. 539, the syllabus reads:

“The juvenile court has jurisdiction of a child only if such child is found to be delinquent, neglected or dependent. The court of common pleas has jurisdiction to issue a writ of habeas corpus to a father who is a fit person for the custody of a child which is neither delinquent, neglected nor dependent.”

The law makes no distinction between children and adults so far as mental illness is concerned. Section 1890-19 of the General Code reads:

“ ‘Mental illness,’ ‘mentally ill,’ ‘mental disease,’ ‘mental disorder,’ shall mean an illness which so lessens the capacity of the person to use self-control, judgment and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control. The terms shall be construed to include ‘lunacy,’ ‘un-

soundness of mind,' 'insane' and also cases in which such lessening of capacity for control is caused by such excessive addiction to narcotics, sedatives or stimulants as to make it necessary for him to be under treatment, care, supervision, guidance or control.  
\* \* \*

However, the responsibility of the state in matters of this kind only comes into existence by virtue of the institutions it supervises under the department of welfare.

Section 1890-7, General Code, provides:

"The director of public welfare, with the assistance of the commissioner of mental hygiene, shall administer the laws relative to persons in institutions under this division, and shall prepare rules and regulations governing this division, the institutions it controls, manages and supervises, and employees thereof. They shall provide for the efficient, economical and humane management, and shall establish by-laws and regulations for the government of all institutions within their respective jurisdictions. They shall ascertain by actual examination and inquiry whether commitments are made according to law.

"The superintendent or person in charge of a state hospital, receiving hospital or any hospital operated by the state shall be the guardian of the person of the patients committed to such hospitals for the purpose of retaining them therein. The superintendent of the hospital shall have exclusive custody and control of the person of the patient during the period of time he is detained for observation or treatment or both, whether a guardian of the person of said patient has been appointed or is appointed by any probate court. Such superintendent shall also be guardian of the person of the patient for the purpose of release on trial visit and shall retain the right of custody during the period of such trial visit. Such superintendent shall have the right to determine the place of abode of such patient while on trial visit irrespective of the existence of a guardian of the person appointed by the probate court.

"Before proceeding with any major operation which in the judgment of the superintendent of the institution is advisable or necessary, the superintendent shall notify or cause to be notified the patient's personal or family physician and the spouse, parent or guardian or one of the next of kin residing in Ohio, if such information is shown by the records on file with the superintendent; except that in cases of grave emergency where the medical staff feels that surgical or other intervention is necessary to prevent serious consequences or death, authority is hereby given to proceed with such measure."

"Persons committed to or detained in any institution or other facility authorized by this act, and controlled and supervised by the department of public welfare, shall have the privilege of freely writing to and corresponding with their relatives, friends, physicians and legal advisers, and they may also receive visits from them, except when it is deemed inadvisable by the superintendent or person in charge of such institution, and in such instances, the superintendent shall place on file in the institution, subject to departmental inspection, a written assignment of the reason for not permitting such correspondence, writing or visits. The patient's personal or family physician shall be admitted at all times."

Section 1890-14, General Code, provides :

"The state of Ohio shall have the care, custody, control and treatment of all persons mentally ill, and of each person who shall be received into any hospital under the control of this division. Except as provided in this act, no county, city or political subdivision shall establish or maintain any institution, hospital or home for the care, control and treatment of the mentally ill."

There are certain procedural steps to follow in order for a mentally ill person to be placed in a state institution. Mentally ill persons must be properly committed to said institution by a court of competent jurisdiction. The Probate Court is charged by law with such jurisdictional matters. However, unless this jurisdiction is invoked by the filing of an affidavit as provided for in Sections 1890-23 or 1890-111b, the court is without authority to act in the premises.

Section 1890-23, General Code, provides :

"For the detention of a person thought to be mentally ill and for his admission to a receiving hospital or state hospital or for other legal disposition the following proceeding shall be had except as otherwise provided by this act: One of the next of kin, or a resident of the county in which the person alleged to be mentally ill has a legal residence or is temporarily residing or detained, shall file in the probate court of said county an affidavit in the manner and form prescribed by the division of mental hygiene which shall contain the following information :

"1. The name and present place of abode of such person, also the place of his legal residence if known, or information that may be necessary to determine his legal residence.

"2. That said person is believed to be mentally ill or in need of specialized observation or treatment or both.

“3. A statement as to whether or not such person is violent or dangerous or has suicidal or homicidal tendencies.

“4. Whether or not by reason of the mental illness of such person his being at large is dangerous to the community.

“5. The names and addresses of the competent adult next of kin.

“6. Whether or not he had ever been committed to an institution for mental illness or a penal institution, or either, within or without the state of Ohio.

“7. The name and address of the patient’s last physician and the personal or family physician.”

Section 1890-111a, General Code, provides :

“Any person may be admitted and detained as a patient by the superintendent, chief officer, or physician in charge of the appropriate state hospital, state receiving hospital, or a private institution or hospital licensed by the division of mental hygiene of the Ohio department of public welfare for the observation, care, custody, or treatment of the mentally ill, or if such person is eligible for care or treatment by the United States veterans administration or other agency of the United States government, by the official in charge of any United States veterans hospital located within the state of Ohio, for a period not to exceed six months as hereinafter provided in this and the next succeeding sections upon the written request of any member of the family of such person, a friend, an individual with whom such person resides, any law enforcing officer of a township, village, county, or municipal government if such person has been taken into custody and placed in jail, or the superintendent, chief officer or physician in charge of a county home, hospital, charitable institution, or a licensed agency, who has reasonable cause to believe that such person is mentally ill, provided that such person is examined by at least two physicians registered in Ohio, each of whom has had at least three years experience in the practice of medicine and neither of whom is on the staff of, or interested financially in, the institution or hospital to which it is sought to have such person admitted and provided further that such request is accompanied by a written medical report and a certification of such physicians that they have examined such person and have reasonable cause to believe that such person is mentally ill and requires hospitalization. Such written request, medical report, and certification shall be directed to the superintendent, chief officer, physician, or official in charge of the institution or hospital to which it is sought to have such person admitted and shall show that such examination was made not more than ten days prior to the admission of such person.”



In Sutherland, Statutory Construction, Vol. 2, at page 316, it is said:

“The most common rule of statutory interpretation is the rule that a statute clear and unambiguous on its face need not and cannot be interpreted by a court and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation.”

The statutes hereinabove quoted are clear and unambiguous and therefore leave nothing for me to construe.

In view of the foregoing, it is my opinion that:

1. The Child Welfare Board of Franklin County is required by virtue of Section 3070-17, General Code, to accept custody of children committed to it by the Franklin County Domestic Relations Court.

2. The State of Ohio is not responsible for mentally defective children unless such children have been committed to a state institution by a court of competent jurisdiction.

3. The Probate Court is without authority to inquire into the question of mental illness on its own motion. To invoke the jurisdiction of the Probate Court, an affidavit is required to be filed pursuant to Section 1890-23 or Section 1890-111a of the General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.