

1839

1. CRIPPLED CHILDREN—AID—DOES NOT CONSTITUTE POOR RELIEF—LEGAL SETTLEMENT—SECTIONS 1352-8, 3391-16 G.C.
2. CRIPPLED CHILD COMMITTED TO DIVISION OF SOCIAL ADMINISTRATION FOR CARE—JUVENILE COURT OF COUNTY WHERE CHILD DOES NOT HAVE LEGAL SETTLEMENT MADE COMMITMENT—DIVISION OF SOCIAL ADMINISTRATION AUTHORIZED TO MEET EXPENSE OF CARE FROM FUNDS ALLOCATED FROM FEDERAL CHILDREN'S BUREAU OF STATE—WHEN COUNTY OF LEGAL SETTLEMENT CAN BE CHARGED WITH EXPENSE OF CHILD CARE—SECTIONS 1352-8, 1639-34 G.C.
3. CRIPPLED CHILD COMMITTED TO DIVISION OF SOCIAL ADMINISTRATION FOR CARE—LEGAL SETTLEMENT OF CHILD IN ANOTHER COUNTY—JURISDICTION OF JUVENILE COURT—AUTHORITY OF DIVISION OF SOCIAL ADMINISTRATION TO CARE FOR CHILD—COST OF MAINTENANCE.

SYLLABUS:

1. The extension of aid to crippled children, as provided in Section 1352-8, General Code, does not constitute poor relief as such term is used in the definition of legal settlement as set out in Section 3391-16, General Code.

2. Where a crippled child has been committed to the division of social administration for care under the provisions of Section 1352-8, General Code, and such

commitment has been made by the juvenile court of a county in which such child does not have legal settlement, the division of social administration is authorized, under the provisions of such section to meet the expense of such care from funds allocated from the federal children's bureau to the state of Ohio for the care of crippled children. In such case, in the event that such child has, or subsequently acquires, legal settlement in a county other than the county from which commitment was ordered, the county of legal settlement can be charged with the expense thus incurred only after the consent of the juvenile court of the county of legal settlement has been obtained, as provided in Section 1639-34, General Code.

3. Where a crippled child has been committed to the division of social administration for care under the provisions of Section 1352-8, General Code, and such child has, or subsequently acquires, legal settlement in another county, the committing court should, in the ordinary case, certify such case under the provisions of Section 1639-34, General Code, to the juvenile court of such other county for further proceedings. Following such certification, and until the juvenile court of such other county otherwise orders, the division of social administration may continue to extend care to such child under the original order of commitment, and the cost of such care must be borne by the county of legal settlement.

Columbus, Ohio, September 15, 1952

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows.

"The division of Social Administration provides care to crippled children under the provisions of section 1352-8, 9, and 10. These children are committed by the juvenile court of the county in which the child is living. Section 1352-8 provides that a crippled child who lacks legal settlement in the county or state shall be paid for from federal funds until legal settlement is obtained.

"There has been disagreement as to the circumstances under which the crippled child does acquire legal settlement. Some of the disagreement arises because of interpretations placed on section 3477 which was repealed, in 1949. That section was interpreted to mean that care to a crippled child prevented establishing legal settlement as it was considered relief to the poor. The same interpretation was applied at that time to Aid for the Aged. However, section 3391-16 which now covers the provisions for legal settlement replaced section 3477 in 1949. In two separate opinions the Attorney General has ruled that the receipt of Aid for the Aged does not prevent establishing legal settlement and it has seemed likely that the same reasoning might apply to aid to

crippled children. We would therefore appreciate your consideration of the following questions :

"1. In the event that application for care is made in behalf of a crippled child who lacks legal settlement in a county, should the cost of such care be paid by the Division of Social Administration from federal funds allotted to the state, or if the child has legal settlement in another county, should the juvenile court of the county in which the application is made, transfer the case to the county of settlement ?

"2. If a child who lacks legal settlement is committed by the juvenile court to the Division of Social Administration and receives aid, does the child and his family acquire legal settlement after a period of 12 months' residence, assuming that they do not receive poor relief or relief from a private agency ?

"3. If a child is committed to the Division of Social Administration by a juvenile court of the county in which he has legal settlement and the child's family then moves to another county taking the child with them, does the receipt of aid to crippled children prevent the family from acquiring legal settlement in the second county after twelve months' residence ?

"4. In the event that the family can acquire legal settlement in the second county, would the Division of Social Administration have authority to bill part of the cost to the county in which legal settlement was acquired, or would it be necessary for the juvenile court of the first county to terminate jurisdiction and for the juvenile court of the second county to make a new commitment ?

"Your advice on these matters will be greatly appreciated."

It would appear that questions 1 and 4, above set out, are merely different aspects of the same basic question, viz., whether the county of legal settlement has any responsibility in meeting the cost of care extended to crippled children under the provisions of Section 1352-8, General Code, in a case where the commitment by the juvenile court, which is a condition precedent to the extension of such care, has been made by the court of a county other than such county of legal settlement.

There is a similar relation with respect to your second and third inquiries for the reason that both involve the same basic question, viz., whether the receipt of aid to crippled children under the provisions of Section 1352-8, General Code, constitutes the receipt of "poor relief"

within the meaning of such term as used in the statute relative to the acquisition of legal settlement.

Before proceeding with a consideration of these two basic questions, we may note at the outset that under the provisions of Section 1639-6, General Code, a child is deemed to have the same residence or legal settlement as its parents, legal guardian of its person, or its custodian who stands in the relation of *loco parentis*, except as otherwise provided by statute.

The effect of the receipt of aid to crippled children in relation to the possibility of acquisition of legal settlement of such children or their parents was considered in Opinion No. 4522, Opinions of the Attorney General for 1941, p. 968, the first paragraph of the syllabus of which is as follows:

“Aid furnished to crippled children by the Department of Public Welfare constitutes relief within the meaning of Section 3477, General Code. The receipt of such aid by the child is chargeable to the parents and is to be considered in determining the loss or acquisition of legal settlement.”

It must be borne in mind that this opinion is based on the statutory definition of “legal settlement” as it was then set out in former Section 3477, General Code. This section, prior to its repeal effective October 20, 1949, read as follows:

“Each person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months without relief *under the provisions of law for the relief of the poor*, or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief. No adult person coming into this state and having dependents residing in another state, shall obtain a legal settlement in this state so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside.” (Emphasis added.)

Since the repeal of this section in 1949 by the enactment of Amended Substitute House Bill 277, 98th General Assembly, the definition of legal settlement has been set out in Section 3391-16, General Code, which section reads in part as follows:

“Except as otherwise provided by law, legal settlement shall be acquired by residing in one county for a period of one year without receiving poor relief or relief from a private agency which maintains records of relief given.” * * *

It will be observed that the test was thus changed from (a) one which takes into account public assistance under the provisions of law generally for the relief of the poor, to (b) one based on the receipt of “poor relief.”

In the enactment of Amended Substitute House Bill 277, *supra*, in which this amendment was effected, there was enacted also Section 339I-13, General Code, which defines poor relief in the following terms:

“Poor relief means food, clothing, shelter, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency. Poor relief may be given in cash or by order or both and shall be inalienable whether by way of assignment, charge, or otherwise, and exempt from attachment, garnishment or other like process. Local relief authorities shall not disburse funds through any private organization. Poor relief may be given to persons living in their own homes or other suitable quarters, but not to persons living in a county home, city infirmary, jail, or tuberculosis sanatorium or to children who are not living with their parents, guardians or other persons standing in place of parents.”

In considering a somewhat similar question in Opinion No. 1607, Opinions of the Attorney General for 1950, p. 183, the writer noted the significance in this change in the statutory definition of legal settlement in the following language:

“It is true that aid for the aged is public assistance, however, Section 339I-13, General Code, as enacted by House Bill No. 277, makes no mention of public assistance as being included within the definition of ‘poor relief.’ Further, Section 339I-15, General Code, as enacted by said House Bill, specifically states that an applicant for poor relief who is receiving aid for the aged may be accepted by the local relief director as proof of eligibility without further investigation.

“Numerous Attorney General’s opinions have been written interpreting former Section 3477, General Code, so as to deny individuals the right to acquire a legal settlement where they are recipients of various forms of relief, including aid for the aged. It will be observed, however, that those opinions evolve around that portion of the section which read ‘and supported himself or herself for twelve consecutive months.’ It must be noted that

the legislature in enacting Section 3391-16, supra, failed to include that phrase in the new act. It should be further noted that the legislature, when it enacted Section 3391-14, supra, clearly indicated that other forms of public assistance shall not prevent the receipt of poor relief if additional need exists. In the face of that provision, I must conclude that receipt of aid for the aged is not poor relief within the meaning of Section 3391-1 et seq., of the General Code."

It appears evident to me that it was the legislative purpose in making this change in the definition of legal settlement to give that term a considerably more restricted meaning than had theretofore been accorded to it, but however this may be, it clearly appears that such term as used in Section 1352-8, General Code, in which provision is made for extension of aid to crippled children, cannot be so construed as to prevent the acquisition of legal settlement merely upon the basis of the extension of aid under such section. In this connection we may note the following provision in Section 1352-8, General Code:

"In the event that a crippled child does not have a legal settlement in the county or state the cost of necessary care until legal settlement is obtained, shall be paid from funds allocated by the federal children's bureau to the state of Ohio for the care of crippled children."

Even a cursory examination of the above language makes it evident that the General Assembly contemplated that a crippled child, upon aid under this section initially being extended to it, might not have a legal settlement in the county of commitment or even in the state, but that legal settlement might thereafter be acquired despite the fact that such aid was currently being extended. Accordingly, in view of this plain statutory provision it is my opinion that receipt of aid to crippled children, under the provisions of Section 1352-8, General Code, does not constitute the receipt of poor relief within the meaning of that term as used in the definition of "legal settlement" set out in Section 3391-16, General Code.

From this it follows that your second question must be answered in the affirmative and your third question in the negative.

In coming to consider the question of which county is responsible for the expense incident to the extension of aid to crippled children under the program with which we are here concerned, it may be helpful first to observe that the authority of the division of social administration to extend

such aid is provided in Section 1352-8, General Code, and that the authority of the juvenile court to commit such child to the division for the purpose of receiving such aid is set out in Section 1639-30, General Code. The final paragraph of the latter section is as follows:

“With respect to a crippled or otherwise physically handicapped child, who is neither delinquent, neglected or (nor) dependent, the court may commit the child temporarily to the division or to any agency in Ohio authorized and qualified to provide or secure the care, treatment or placement required in the particular case.”

A general provision in the juvenile court code for contributions to the expense incurred in connection with aid extended to wards of the court is set out in Section 1639-34, General Code. This section reads in part as follows:

“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. * * *”

Certain special statutory provisions relative to the expense of care for crippled children are found in Section 1352 et seq., General Code. Certain of these sections and parts of sections read as follows:

Section 1352-4:

“The actual traveling expenses of any dependent, neglected, or delinquent child and of the agents and visitors of said division (of social administration) shall be paid from funds appropriated to said division, but the amount of board, if any, paid for the care of such child and the expense for providing suitable clothing and personal necessities, mental, medical, surgical, dental and optical examination and treatment shall be charged by the division of social administration to the county from which such child was committed or transferred as provided in sections 1352-3, 1352-5, and 1352-8. 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 division.”

Section 1352-9:

“The division of social administration shall arrange for the treatment of crippled children committed to it by the juvenile court. The actual travelling expenses of any such crippled child and of agents and representatives of said division shall be paid from funds appropriated to said division. The expenses for such crippled children for board, clothing and personal necessities and for mental, medical, surgical, dental and optical examination and treatment, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep, when necessary (,) and burial when neither of the parents nor the guardian, as the case may be, is able to meet the expense of burial, shall be paid out of funds appropriated to the use of the division of social administration; but shall be charged by the division of social administration to the county from which said child is committed or transferred. * * *”

Section 1352-16:

“When an account for a crippled child is presented to the county from which committed, an allowance shall be credited to such account as may be determined to be equitable by the division of social administration, due to funds allotted by the United States or the state of Ohio, or both.”

In considering the effect of these provisions it was held in the 1941 opinion, *supra* :

“The county of commitment is primarily responsible to the Board of State Charities, now the Division of Social Administration of the Department of Public Welfare, for the expenses of care and treatment provided for crippled children. Where the committing county is not the county of legal settlement the latter county may be rendered financially responsible providing the consent of the judge of the juvenile court of the county of legal settlement is first obtained.”

However, since the date of this opinion Section 1352-8, General Code, has been amended to include the final paragraph hereinbefore quoted, which provision for the sake of convenience is here repeated :

“In the event that a crippled child does not have a legal settlement in the county or state the cost of necessary care until legal settlement is obtained, shall be paid from funds allocated by the federal children’s bureau to the state of Ohio for the care of crippled children.”

Not only does this provision appear to be mandatory but it plainly evinces a legislative intent that if the county of legal settlement cannot be charged with the expense involved no claim with respect thereto is to be asserted against any other county. This view is entirely in harmony, of course, with the provision already noted in Section 1352-16, General Code, for the allowance of a credit to the county of commitment, where an account for a crippled child is presented, “due to funds allotted by the United States.” I specifically conclude, therefore, that where a commitment has been made under the provisions of Section 1352-8, General Code, by the juvenile court of a county in which the child concerned does not have a legal settlement, the cost of the necessary care thus incurred should be paid by the division of social administration from funds allotted by the federal children’s bureau, and such cost should not be charged to the county of commitment.

In any such case where the child concerned has or subsequently acquires, legal settlement in a county other than the county of commitment we are confronted with two additional problems.

These problems relate to the responsibility of the county of legal settlement for (1) the expense of the future care extended to the child concerned and (2) the expense already incurred in the provision of such care.

By reference to Section 1639-34, General Code, it will be observed that the committing court may, when the child has legal settlement in another county, certify the case to the juvenile court of such other county "for further proceedings." Although this provision is clearly not mandatory, it would appear to be the intent of the statute that such certification would be accomplished as a matter of course in the ordinary case. Following such certification, and until such juvenile court to which the case has been certified otherwise orders, I conclude that care by the division under the original commitment may be continued, and that the cost of such continued care must be borne by the county of legal settlement.

As to the cost of care extended prior to such transfer of jurisdiction, it will be observed that the county of legal settlement can be charged therewith only in the event that the judge of the juvenile court of such county consents thereto as provided in Section 1639-34, *supra*.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. The extension of aid to crippled children, as provided in Section 1352-8, General Code, does not constitute poor relief as such term is used in the definition of legal settlement as set out in Section 3391-16, General Code.

2. Where a crippled child has been committed to the division of social administration for care under the provisions of Section 1352-8, General Code, and such commitment has been made by the juvenile court of a county in which such child does not have legal settlement, the division of social administration is authorized, under the provisions of such section to meet the expense of such care from funds allocated from the federal children's bureau to the state of Ohio for the care of crippled children. In such case, in the event that such child has, or subsequently acquires, legal settlement in a county other than the county from which commitment was ordered, the county of legal settlement can be charged with the expense thus incurred only after the consent of the juvenile court of the county of legal settlement has been obtained, as provided in Section 1639-34, General Code.

3. Where a crippled child has been committed to the division of social administration for care under the provisions of Section 1352-8, General Code, and such child has, or subsequently acquires, legal settlement in another county, the committing court should, in the ordinary case, certify such case under the provisions of Section 1639-34, General

Code, to the juvenile court of such other county for further proceedings. Following such certification, and until the juvenile court of such other county otherwise orders, the division of social administration may continue to extend care to such child under the original order of commitment, and the cost of such care must be borne by the county of legal settlement.

Respectfully,

C. WILLIAM O'NEILL
Attorney General