

1803.

BOARD OF STATE CHARITIES—NOT LIABLE TO ONE WHO BOARDS CHILDREN UNDER ITS CONTROL FOR MONEY PILFERED—NO AUTHORITY TO PAY SUCH CLAIM.

The board of state charities is not liable to one who is boarding children under its control for money pilfered at various times from the one having a contract with the board to provide keep for such children, and has no authority of law to pay such claim.

COLUMBUS, OHIO, January 21, 1921.

Board of State Charities, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your request for an opinion, which reads:

“Under the provision of section 1352-3 of the General Code, the Children’s Welfare Department of this board finds it necessary to board a number of children in and about Columbus until such time as a free foster home can be obtained or until the children are in a physical and moral condition to be placed in such free homes.

One of our boarding mothers has made affidavit to the effect that two boys who have been boarded with her have stolen money at various times from her to the amount which she believes is about \$100. She claims that we are responsible for these children and should compensate her for her loss.

The matter was presented at the last meeting of the Children’s Welfare committee of the board and I stated at that time that I had doubts as to whether we had a legal right to pay such expenses even after investigation would disclose that the claim is just and proper. Nevertheless, I recognize that we are the legal guardian of the children and, as a general principle of law, a parent or guardian is responsible for the damage done by minors who are their children or wards. The committee, therefore, directed me to submit the problem to you for advice.

If this expense is legal and payable, from what funds shall it be paid, or should it be presented to the General Assembly as a sundry claim? If such a claim is just, can it be paid from the rotary fund and charged to the county from which the child is received?”

Section 1352-3 G. C. reads:

“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 statute provides only for the payment of traveling expenses in placing children, payment for board, clothing, personal necessities, physical examination and treatment of the children who are the wards of the board.

The law governing the board of state charities is found in chapter 24, General Code of Ohio, sections 1349 to 1359, inclusive. Nowhere in the law is there to be found an express provision for the payment of such a claim as your communication mentions or other claims except those incidental to the keep, well-being and proper supervision of the wards of the board.

Section 1349 provides that there shall be a board of state charities of nine members, eight of whom shall be appointed by the governor, he being ex-officio the ninth member of the board. The board thus is and functions as an administrative board and as a part of the executive branch of the state government.

The relation in which the board of state charities stands to the infants or minor children coming into its care is that of guardian and ward. Indeed, the law as found in section 1352-3 above expressly states that the board is the sole and the exclusive guardian of the child or children committed to its care and control. The law relative to statutory guardians obtains as to these children or wards. The children are in the custody of the law but are, so to speak, the wards of the state.

The wrongdoing complained of and for which reimbursement is asked is in such an amount as, upon proof and conviction, to constitute a very grave offense, punishable, if the children are not of too tender age, by commitment to the reformatory or the boys' industrial school. Your statement does not disclose the ages of these boys. However, criminal proceedings result in punishment by the state and generally provide no recompense for the wrong that is done to the injured party. The loss herein alleged could be made good through a successful action sounding in tort where the wrongdoer was the owner of property that could be reached upon execution.

In Cooley on Torts, Third Edition, Vol. I, at pp. 177-179, the following is found:

"The general rule is that an infant is responsible for his torts, as any other person would be * * *.

All general statements that an infant is responsible like any other person for his torts, are to be received with the qualification that the tort must not

be one involving an element which in his particular case must be wanting.
* * *

Whoever has transactions with a person of immature and slender capacity or is so brought into relations with such a person that the negligence of the latter may expose him to injury, may reasonably on his own part be charged with a higher degree of care and caution than could be required of him in the like dealings or under similar circumstances with other persons. * * *"

The reason the law requires infants, incompetents, imbeciles and insane persons to be liable for their torts in charging losses effected through such acts to their estates, is that the injured person should be recompensed. Judge Cooley remarks "that the question of civil responsibility for wrongs suffered is one that directs our attention chiefly to the injury done; and that the weakness of the party committing it, or the absence of any deliberate purpose to injure, must commonly be of little or no importance." *Id.* page 171.

It is well settled that a parent is not responsible for the torts of his child unless he is connected therewith or promotes or encourages such wrongdoing.

Lacker vs. Ewald, 8 O. N. P. 204.
Cluthe vs. Svendsen, 9 Dec. Rep. 405a;
Cameron vs. Heister, 10 Dec. Rep. 651.

It is also well settled that a guardian is not personally responsible for a tort committed by his ward, and further that the ward is not liable to third parties on contracts made by a guardian. *Am. & Eng. Ency. of Law*, Vol. 15, pp. 78-85. Another way of stating the matter is that a guardian has authority over a ward in a more limited degree than that of a parent. Quoting Cooley on Torts, at page 300, also page 493, it is said:

"A guardian of the *person* of his ward has a right of personal restraint corresponding to that of the parent, but without, in general, the power of chastisement. That power would probably be possessed in extreme youth if the ward were received into the family of the guardian, who thus was placed, in respect to him, *in loco parentis*. * * *

The guardian of the ward's person may, in general, maintain suits for personal injuries to the ward when, under corresponding circumstances, the parent might maintain them."

It would seem that if the one who is boarding these children is to be reimbursed for the alleged loss sustained, it must be done through an action in tort against the children.

The board's liability to one who is boarding its wards is contractual,—the children are cared for for a stipulated price and the law provides that the contract may be terminated at the pleasure of the board. It may contract to pay for board, under the law, and is bound thereby to furnish clothing and personal necessities. It is required by law that the board shall visit the children in the homes where they live at least twice each year, so that the evident intent is that the board shall at all times be informed as to its wards' conduct, care and well-being in the homes where placed, and whenever the interest of the ward shall require it, may cancel the contract and remove the ward. In no sense is it expressed or implied in the law that the board shall be liable for the injury resulting from the wrongful acts of its wards

in the absence of acts of the board or its agents that encourage or promote the wrongful things done by the wards.

It may be presumed that one contracting to board such children does so knowing that they may be mischievous, inquisitive and full of pranks, as the young usually are, and that annoyance and injury may possibly result therefrom, and so assumes some considerable risk in that respect, to be subverted, if at all, by extra care, attention and forethought on the part of those furnishing the keep of these children.

It is believed that no action may be maintained by the one who is boarding these children for the board against it because it is one of the agencies of the executive power of the state, and certainly no express authority of law makes it liable to pay the claim spoken of in your letter, even though such action were possible under the laws governing guardian and ward.

From what has been said and upon the authorities cited it is the opinion of this department that the board of state charities cannot pay the alleged claim set out in your letter out of any fund it may have or that may be available. A discussion, therefore, as to the fund from which payment should be made is unnecessary in the absence of a legal liability to pay the alleged claim.

In reply to your inquiry as to whether or not this matter should be presented as a sundry claim, you are advised that it is not within the province of this department to suggest or direct the determination of such a proceeding, and nothing is said in reference thereto.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1804.

APPROVAL, BRIDGE BONDS OF MONTGOMERY COUNTY, OHIO, IN
 AMOUNT OF \$18,000.

COLUMBUS, OHIO, January 21, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

1805.

APPROVAL, REFUNDING BONDS OF MONROE TOWNSHIP RURAL
 SCHOOL DISTRICT, LOGAN COUNTY, OHIO, IN AMOUNT OF \$9,000.

COLUMBUS, OHIO, January 21, 1921.

Industrial Commission of Ohio, Columbus, Ohio.