

servancy District under the appropriation made to said Conservancy District in and by House Bill No. 61 enacted by the 90th General Assembly under date of April 7, 1934; all of which is contemplated by and is in accordance with the agreement entered into by and between the Controlling Board and the Board of Directors of said Conservancy District with respect to the expenditure of the moneys appropriated by said act for the uses and purposes of the Conservancy District.

In this view and for the purpose above stated, this contract encumbrance record has been properly executed and the same shows that there is a sufficient unencumbered balance in the appropriation account covered by the moneys released by the Board of Control to pay the purchase price of the real property here in question, which purchase price is the sum of \$9500. In this connection, it is noted that under date of December 5, 1934, the Controlling Board released from this appropriation account an additional sum of \$100,000, which is an amount sufficient to cover the purchase price of the real property here in question and of all other tracts of land which have been submitted to this office for consideration.

Subject to the exceptions above noted, the title to the above described property of Carrie B. Culler is approved and the certificate of title, warranty deed, contract encumbrance record No. 16 and other files relating to this purchase are herewith enclosed for further appropriate action on your part and upon the part of the Auditor of State.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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3700.

CHILDREN'S HOME—COUNTY COMMISSIONERS UNAUTHORIZED  
TO PAY BOARD OF NEGLECTED AND DEPENDENT CHILDREN  
TO PRIVATE AGENCY WHERE CHILDREN'S HOME IN COUNTY

*SYLLABUS:*

*In a county in which there is a County Children's Home, the county commissioners have no authority to pay to the Children's Bureau, which is a private agency, the board of neglected and dependent children, who have been adjudged by the Juvenile Court as county dependents.*

COLUMBUS, OHIO, December 29, 1934.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

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

“The Division of Charities has, for a number of years, carried out a procedure in connection with the care of dependent children in Lucas County, which is entirely legal, but which puts the state in the position of being nothing more than a collection agency. It is our opinion that if possible some other procedure should be followed and it is also the wish of the Lucas County officials that an opinion be asked for on the subject.

The situation is as follows:

In Toledo there is a Children's Bureau of the Social Service Federation, which accepts dependent children for care. The budget for the operation of the Children's Bureau is provided by the Toledo Community Chest. When a request for care of a child, who quite clearly should be a public charge, is made, the Juvenile Court of Lucas County commits such child to the Division of Charities, but the Children's Bureau remains responsible for the placement and supervision of the child and for making all social investigations incident to his acceptance and discharge. Bills are rendered to the Division of Charities for the board, clothing and medical service of such children. These bills are then paid by the Division of Charities as provided by Section 1352-3 of the General Code and later charged back to the County according to Section 1352-4.

Each request on the part of the Children's Bureau for acceptance of a child as a public ward is carefully scrutinized and when the agency is visited, prior to issuing certificates of approval (Section 1352-1) special attention is paid to the records on state wards. However, the Division itself does not supervise the children accepted, but designates the Children's Bureau to act for it in this capacity, as provided by Section 1359 of the General Code.

From time to time effort has been made to work out a plan in Lucas County whereby the Juvenile Court could make the commitments of these public charges to the Lucas County Children's Home, which in turn could legally ask the Children's Bureau to give supervisory service, but would pay the board from the Children's Home fund. This would mean, that instead of the board being paid from the general fund as is done when we render bills to the County Commissioners, that the County Commissioners would budget this same amount of money as an integral part of the Children's Home budget, set aside for boarding purposes.

The reason for the acceptance of public wards by the private Children's Bureau, is because the Lucas County Children's Home does not have an adequate service department which can develop boarding home care for infants and for children who are definitely public charges but who have mental or physical handicaps which make it impossible to care for them in a group.

Repeated efforts have been made to get the Trustees of the Lucas County Children's Home to co-operate in the plan outlined above so that the State might withdraw from the administrative aspects of the child caring program in Lucas County. For various reasons which are not relevant to this request, the Trustees have refused to approve any suggestion looking toward a co-operative relationship between the institution and the Children's Bureau.

The County Commissioners understand that the State is functioning only as a collecting agency, insofar as the relationship between the State, in accepting these wards, and the Children's Bureau is concerned.

The specific question to which we would like to have an answer is: 'Can the County Commissioners legally pay the board of children, who have been adjudged by the Juvenile Court as county dependents

to the Children's Bureau, which is a private agency, without having such payments go either through the Ohio Department of Public Welfare, Division of Charities, or through the Lucas County Children's Home? The County Commissioners, the Prosecuting Attorney of Lucas County, the officials of the Community Chest and the Department of Public Welfare are all equally interested in having an answer to this specific question."

An examination of Sections 1352-1, 1352-3, 1352-4 and 1359, General Code, to which you refer, discloses no authority whereby a board of county commissioners may pay, to a private agency, the board of children who have been adjudged county dependents by the Juvenile Court.

I call your attention to Sections 1653 and 3092 of the General Code, which provide in so far as pertinent as follows:

Sec. 1653.

"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 the 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. \* \*" (Italics the writer's).

Sec. 3092.

"In any county where such home (referring to a children's home) has not already been provided or where such home has been abandoned by the county commissioners as provided by law, the board of county commissioners may enter into a contract for the care of its neglected or dependent children with a county children's home in another county, *or with any institution or association in the state which has for one of its objects the care of dependent or neglected children, provided such institution or association has been duly certified by the board of state charities;* or the board of county commissioners may pay reasonable board and provide suitable clothing and personal necessities as well as medical, dental and optical examination and treatment of dependent or neglected children who may be placed in the care of private families within the county. Provided that in any such case such dependent or neglected children shall be duly committed to the aforesaid

institution or association or placed in the care of a private family by the juvenile court as provided by law. Provided, that with the approval of the board of state charities, when in the judgment of the county commissioners the best interests of the dependent wards of the county will be subserved thereby, they may appoint a county child welfare board of four, two members of which shall be women, to serve without compensation, such appointments to be subject, as far as applicable to the provisions of Section 3081 and 3082 of the General Code. Such board shall have the same powers and duties relative to dependent children as are now given to trustees of county children's homes, so far as applicable, particularly relating to the appointment of a visitor for the finding and supervision of family homes for such children." (Italics the writer's).

Section 3100, General Code, relative to children being placed in private families through private institutions by the trustees of a children's home, provides as follows:

"The trustees of such children's home may also place children under their charge in suitable homes in private families, through well known and established private institutions, duly incorporated under the laws of the state, and approved by the board of state charities as provided by section 1352-1 of the General Code, which have, as their object, the fitting for, and placing of children in families. Such trustees of two or more counties may unite in the employment of a visiting agent who shall serve them in such manner with such compensation as the trustees so uniting prescribe."

I call your attention to an opinion of this office to be found in Opinions of the Attorney General for 1922, Vol. 1, page 149, 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."

Section 3092, General Code, referred to in the above quoted syllabus has not been amended and Section 1653 has not been amended in any respect material to your inquiry. This opinion was in answer to a request which read as follows:

"Is it legal for the county commissioners to pay the board of children who become wards of the juvenile court and whom the court wishes to board in private families, in counties where a county chil-

dren's home exists without committing the children to the Division of Charities? In other words, may a court ask the county to pay bills for board of children when he feels that such children should be boarded rather than sent to the children's home?

If the trustees of a county children's home refuse to board children in private families as section 3093 G. C. provides they may do when such care seems desirable, what alternative has a juvenile court when he believes certain children should be boarded other than to commit them to the Division of Charities?

Does the latter part of section 3092 G. C. permit the county commissioners to pay board for children if the court prefers to place them in private boarding homes where there is a children's home within the county?"

The opinion was based upon the following reasoning, to be found on 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 would be given your first question. \* \* \*

Answer to your third question may be briefly made in the negative, since it is believed that section 3092 G. C. as amended in 109 O. L., p. 533, although slightly changed in other respects from the original section, still provides in chief for those cases arising wherein there is no children's home within the county, and consequently is not thought to be applicable to counties where such a home already exists."

It is also obvious from a reading of Section 3092, General Code, referred to supra that the children's bureau, which is a private agency, would be in the same category as private families in this connection. I am in accord with both the conclusion and reasoning of this opinion. Moreover, my examination of the General Code fails to disclose any statutory authority for the county commissioners to pay the board of children that have been adjudged by the Juvenile Court as county dependents to a children's bureau which is a private agency, where a county children's home is provided in the county. It is fundamental that county commissioners have only those powers which are fixed by statute or are necessarily implied from the language of the statutes. *State, ex rel., vs. Medical Board* 107 O. S. 20; *State, ex rel. Commissioners*, 8 N. P. (N. S.) 281; *Ireton vs. State, ex rel.* 12 O. C. C. (N. S.) 202; *Peter vs. Parkinson* 83 O. S. 36. Such rule is stated by Matthias, J. in the case of *Elder vs. Smith*, 103 O. S. 369, 370, in the following language:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction and only such as are conferred by statute."

Consequently, in specific answer to your inquiry, it is my opinion that in a county in which there is a County Children's Home, the county commissioners have no authority to pay to the Children's Bureau, which is a private agency, the board of neglected and dependent children, who have been adjudged by the Juvenile Court as county dependents.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3701.

PUBLIC BUILDING—VOTE OF ELECTORS NECESSARY WHERE  
TOWNSHIP AND VILLAGE LOCATED THEREIN UNITE TO  
CONSTRUCT NEW BUILDING.

**SYLLABUS:**

*A township and village located in such township cannot unite in the erection of a new public building without submitting the same to a vote of the electors of both subdivisions as required by Sections 3399, et seq., General Code, even though most of the material for said building is to be supplied from an old building which it is proposed to raze and which had been constructed jointly by such township and village.*