

Furthermore, this section of the act also provides certain restrictions for the issuance of bonds under such act, without the authority of an election, in excess of the net indebtedness limitations of the Uniform Bond Act "whether such bonds shall have been or may be voted." This apparently means that bonds may be issued to a certain extent in excess of debt limitations without necessity of a vote of the electors under this act, which bonds may have been voted under the provisions of the Uniform Bond Act.

One of the objections made to the bond issue of the city of Columbus in the case of *State, ex rel. vs. Ketterer*, 127 O. S. 483, was that the ballot contained no mention of the fact that the city was to participate in federal aid in the construction of the improvement for which the bonds were to be issued. While nothing was said in the opinion in this case concerning this particular objection, the court nevertheless held the bond issue valid.

I am of the opinion, therefore, that where the question of issuing bonds is submitted to the electors of a subdivision under the provisions of Section 1 of Amended Senate Bill No. 403 of the 90th General Assembly, as amended by Amended Substitute Senate Bill No. 38 of the first special session of the 90th General Assembly, as amended by Amended Senate Bill No. 28 and Amended Senate Bill No. 102 of the second special session of the 90th General Assembly, an affirmative vote of a majority of those voting upon the proposition is sufficient although no mention is made on the ballot that the subdivision is to participate in federal aid under the provisions of the National Industrial Recovery Act and/or the Federal Emergency Relief Act in the construction of the improvement for which the bonds are to be issued.

Respectfully,

JOHN W. BRICKER.

*Attorney General.*

3806.

CHILDREN'S HOME—BEQUEST OF PERSONAL PROPERTY THERETO  
—ADMINISTERED EITHER BY COUNTY COMMISSIONERS OR  
TRUSTEES OF HOME—BEQUEST TO TRUSTEES ADMINISTERED  
BY THEM.

SYLLABUS:

1. *After a county children's home has been established and a bequest of personal property is made to the county children's home for the support of the use and benefit of such institution, either the county commissioners or the trustees of such institution, or both may accept and administer such bequest as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest. (Opinions of the Attorney General, 1921, Vol. I, p. 604 modified.)*

2. *By virtue of the provisions of Section 3083, General Code, a bequest of personal property to the trustees of a children's home for the support or the use and benefit of such institution should be accepted and administered by the trustees of such institution as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest.*

COLUMBUS, OHIO, January 12, 1935.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your request for my opinion which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

QUESTION 1: When a bequest is made to a County Children's home, should such bequest be administered by the county commissioners of the county in which the home is located, or by the trustees of the Children's Home?

QUESTION 2: If a bequest is made to the Trustees of the Children's Home, should such bequest be administered by the Trustees of the Children's Home, or by the county commissioners?

Your attention is called to Sections 3080 and 3083, General Code, and Opinion, page 604, Attorney General's 1921 Reports."

You make reference in your request to an opinion of my predecessor in office to be found in Opinions of the Attorney General for 1921, Vol. I, page 604 which held as disclosed by the syllabus:

"A bequest of money to the children's home of Ashland County, Ohio, may lawfully be paid to and received by the county commissioners in trust for the support of the home."

Inasmuch as the statutes quoted in this opinion have not been changed in any respect since that time and since that opinion is brief I shall quote it and the request for it in their entirety:

"You have requested the opinion of this department as follows:

'Will you please furnish us with an opinion on who is the proper party to handle the funds in the following bequest:

"I give, devise and bequeath the sum of \$300, to the children's home of Ashland County, Ohio."

There is nothing said as to the trustees of said home handling this money, neither is there anything said about the county commissioners handling the fund. The executor of the will wants to pay the money over and the trustees want it but it is a question in my mind whether or not the trustees can handle any money at all under the present law.'

Section 3080, General Code, provides as follows:

'Such (county) commissioners may receive and hold in trust for the use and benefit of the home, any grant or devise of land and any donation, bequest, money or other personal property that may be made for the *establishment and support* of such home.'

Further to illustrate the scheme set up in the statutes of this state for the fiscal administration of a county children's home, the following may be quoted:

'Sec. 3104. The board of trustees shall report annually to the commissioners of the county the condition of the home, and make out and deliver to the commissioners a carefully prepared estimate, in writing, of the wants of the home for the succeeding year. Such estimate shall specify separately the amounts required for each of the following pur-

poses, to-wit: First, maintenance. Second, repairs. Third, special improvements.'

'Sec. 3105. At their regular quarterly meeting at which such estimate is presented to them, the commissioners shall carefully examine the estimate, and if, in their judgment, it is reasonable and ratably within the assessment for the support of the home for the current year, or so much thereof as they deem reasonable and within such assessment, the board of commissioners shall allow and approve, and shall appropriate and set apart such amount for the use of the home. Upon the order of the trustees of the home, the county auditor shall draw his warrant upon the county treasurer, who shall pay such warrant from the fund so appropriated and set apart.'

'Sec. 3106. The trustees shall contract no debts and make no purchase in excess of the amount so appropriated. No member of the board of trustees of a children's home shall sell or supply any article for the maintenance of the home or be interested in any contract made by the board.'

It is inferred from your letter that Ashland County has a county children's home governed by the above quoted sections, and that such home was the intended beneficiary of the bequest quoted in your letter. A county children's home is not a body corporate, and has no legal existence as a person empowered to hold legal title or to take by a bequest. It seems, however, that the testator's intention that the sum of three hundred dollars shall be applied in the proper manner to the support of the children's home is clear. It is concluded, therefore, that the bequest has the legal effect of one made to the proper legal body for the use of, or in trust for, the support of the children's home. That legal body is pointed out by section 3080 of the General Code, and is the county commissioners. That section, in the opinion of this department, means that any donation, bequest, money or other personal property that may be made for the *establishment and support* of the children's home is to be received and held in trust for such purpose by the county commissioners. *The trustees of the home have no authority to receive and hold money for that purpose, and in fact have no authority to disburse any money for the support of the home save in pursuance of appropriations made by the county commissioners, who constitute the public agency in supreme control of the fiscal affairs of the institution.*

Accordingly, it is the opinion of this department that the county commissioners are authorized to receive, and the executor is entitled to pay over the sum mentioned in the bequest for the use of the children's home." (Italics the writer's.)

However, in the opinion quoted supra no consideration was given to Section 3083, General Code, which was in effect at the time of the rendition of that opinion, and is still in effect. Such section provides:

"When a person has bequeathed or hereafter bequeaths any property to the use and benefit of a county children's home, the trustees thereof may accept and use such bequest as they deem for the best interests of the

institution consistent with the provisions and conditions of such bequest.”  
(Italics the writer's.)

It is to be noted that Section 3080, General Code, quoted supra in the 1921 opinion, is more inclusive than Section 3083, quoted above, in that the county commissioners may receive and hold in trust for the establishment and support of a children's home both real estate and personal property, whereas Section 3083, General Code, merely provides that the trustees of the children's home may accept and use "bequests" as they deem for the best interests of the children's home consistent with the provisions of such bequest. The word "bequest" obviously refers only to personal property.

The legislative history of Sections 3080 and 3083, General Code, fails to shed any significant light on the questions you present in the inquiry. Judging from the position these sections occupy in the chapter of the General Code, "Children's Homes," it might be argued that when a bequest is made to a children's home for the "establishment and support" of such home, then, and only then, would the county commissioners have authority to receive such bequest in trust for the support of county children's homes. It would follow, in line with such reasoning, that after such children's home has been established and the trustees appointed, a bequest to the children's home for the "use and benefit of the county children's home" or its support, should be accepted by the trustees of such children's home and be used for the best interest of the institution consistent with the provisions and conditions of such bequest. However, this argument and conclusion derived therefrom is not a necessary one, and in my opinion is a too narrow construction of Section 3080, quoted supra. It is my opinion that after a county children's home has been established either the county commissioners or the trustees of the children's home, or both, are eligible to receive and administer a bequest for the purpose of the support or for the use and benefit of a county children's home. The dicta in the 1921 opinion that "the trustees of a home have no authority to receive and hold money for that purpose, and in fact have no authority to disburse any money for the support of the home save in pursuance of the appropriations made by the county commissioners, \* \* \*," to my mind is not sound in that the sections in that opinion refer to money raised by public taxation.

I come now to a consideration of your second question asking whether or not the trustees of the children's home or the county commissioners should administer a bequest made to the trustees of the children's home. I assume for the purpose of this opinion that the bequest is made to the trustees for the support or use and benefit of a county children's home, and not for the establishment of a county children's home. In such case the bequest being made directly to the trustees of the children's home there is no doubt as to the intention of the testator as to the proper trustees of such bequest as is the case where the bequest is made for the support or use and benefit of the *county children's home* and neither the trustees nor the county commissioners are mentioned in the bequest. Consequently in such case, it is my opinion that by virtue of Section 3083, General Code, the trustees of the children's home and not the county commissioners should accept and administer such "bequest" as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest."

Specifically answering your two questions it is my opinion that:

1. After a county children's home has been established and a bequest of personal property is made to the county children's home for the support or the

use and benefit of such institution, either the county commissioners or the trustees of such institution, or both may accept and administer such bequest as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest.

2. By virtue of the provisions of Section 3083, General Code, a bequest of personal property to the trustees of a children's home for the support or the use and benefit of such institution should be accepted and administered by the trustees of such institution as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*