

RE: Bonds of City of Campbell, Mahoning County,  
Ohio, \$10,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of deficiency bonds in the aggregate amount of \$206,000, dated May 15, 1935, bearing interest at the rate of 5% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

983.

DEPENDENT CHILD COMMITTED TO INSTITUTION—PAY-  
MENT FOR CARE AND BOARD, WHEN.

*SYLLABUS:*

*Unless a dependent child is committed to an institution designated by Section 1639-34, General Code, or a family home, as therein provided, and in conformity with the Juvenile Court Code, no payment for the care and board of such child is authorized, as there is no commitment under the law.*

COLUMBUS, OHIO, August 7, 1937.

HON. ROBERT G. CARPENTER, *Prosecuting Attorney of Seneca County,  
Tiffin, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

"Our Probate Judge has requested that I secure an opinion from you in regard to the commitment and support of dependent children.

This County has several dependent children whom our Court would like to place in a Home owned and operated by an Ohio Lodge. The trustees of this Lodge refuse to accept pay for the support of these children, direct from the County,

claiming that it would make the property of the Home subject to taxation, because it would then be classified as a boarding house. They suggest that the County make the payments for support to the member lodge at Fostoria, Ohio, which will in turn remit to the Home. Under the rules of the order, the member lodge is responsible for the support of the children.

Now of course this individual member lodge does not maintain the Home, can not be licensed by the State Department of welfare, and therefore can not receive commitment of children.

The Court's specific questions are:

1. Is the contention of the trustees correct in that payment can not be made directly to the Home?
2. Can the County legally pay this support to the member lodge, when in fact the children are not committed to the member lodge and are not supported by it?

To briefly resume, our Court is desirous of committing children to this Home, but seriously doubts if the County can legally make these indirect payments for their support in the manner suggested by the trustees of the Home."

It is a maxim almost as old as the law itself that what can not be done directly under the law, can not be done by indirection. You admit that the local lodge does not own and operate the home; that the home can not be licensed by the State Department of Public Welfare and can not receive the commitment of children. This statement, it would seem to me, disposes of all your questions.

I take it that the Grand Lodge of Ohio operates the home as a charitable institution; that so long as it remains a charitable institution, it is exempt from taxation; that when it begins boarding children for pay, it is feared it will lose its character as a charitable institution, become a boarding house and subject to taxation as any other boarding house. The question as to whether or not the acceptance of children by the home and the receipt by it of pay for their care and custody subjects such home to taxation, in no wise affects the question you submit and I shall not pass on it.

This sounds like good reasoning to me and frankly, I do not see how a subterfuge could be invented to circumvent it. This home, in all probability, would be the best possible place for these unfortunate children, but the virtue of the institution can not change the law. The county might send the money representing the pay for boarding these children around the Globe and through the hands of dozens of persons, with the

home as its ultimate destination, and it would eventually reach its destination—what would you have? Simply this—that the county paid the money for the board and keep of these dependent children and the home received it.

I do not deem it necessary to cite a great deal of law to support my opinion to the effect that such an arrangement as you state, can not be entered into. We have a new Juvenile Court Code effective August 19, 1937, comprehended in Sections 1639-1 to 1639-62, inclusive, General Code of Ohio.

Section 1639-22, General Code, provides for the detention of dependent children between the periods of complaint and commitment. In substance, this section provides that juveniles shall not be detained in any penal institution. It further provides that the county commissioners upon the advice and recommendation of the juvenile judge shall provide a detention home for delinquent, dependent and neglected children under eighteen years of age. Of course, the General Assembly knew when it was considering the new Juvenile Court Code that many of the smaller counties of the State had made no provision for a detention home and it went farther and provided that the court could arrange for the boarding of such children temporarily in private homes, or it could arrange with any incorporated institution or agency within the jurisdiction of the court to receive such children for temporary care and in such event the court is authorized to fix a reasonable sum for the care and board of such children, which sum shall be paid by the county. It will be noted that no provision is made in this section to the effect that the "incorporated institution or agency" therein referred to shall be approved by the state department of public welfare.

Section 1639-30 provides that if upon hearing, the Court determines that a child is delinquent, dependent or neglected, it may commit the child to a suitable public institution or agency or to a suitable private institution or agency, incorporated under the laws of the State, *approved by the Department of Public Welfare* and authorized to care for children, *or to place them in suitable family homes.*

Section 1639-34 provides in substance that the Court, shall make provision for payment for board and care of a child *committed as provided by this chapter.*

The antithesis disposes of your question, namely, that unless a dependent child is committed to an institution designated by the Juvenile Code, or family home, and in conformity with the provisions thereof, no payment for the care and board of such child can be authorized.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*