2404.

STATE WARDS—STATUTE MUST PROVIDE FOR THAT STATUS BEFORE PERSON BECOMES WARD OF STATE—STATUS OF CHILD BORN TO WOMAN WHO IS AN INMATE OF STATE INSTITUTION—OBLIGATION OF COUNTY EXTENDS ONLY TO CHILDREN COMMITTED TO STATE'S CARE.

1. *A person does not become a ward of the state unless a statute exists which provides for that status.*

2. *No statute exists which says that a child born to a woman who is an inmate of a state institution thereby takes the status of the mother.*

3. *The obligation of the county, under section* 1352-4 *G. C.* (109 *O. L.* 362), *extends only to children committed to the state's care. Children received by state institutions informally and not by virtue of a statutory proceeding are not included in said section.*

COLUMBUS, OHIO, September 8, 1921.

DR. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Your letter of August 30 is at hand, reading thus:

> "A condition exists at the Institution for Feeble Minded, on which we find it necessary to request your opinion.
>
> Several young women admitted to the Institution for Feeble Minded have later become mothers. These children are now arriving at an age when some of them should be released from the institution. They are residents therein by sufferance, not having been technically committed to the institution, and the mothers of the children are not mentally competent to be released.
>
> The superintendent thinks it advisable to transfer some of these children to the children's bureau of the division of charities in order that they may be placed in suitable homes. Your opinion is respectfully requested on the following questions:
>
> (1) Are these children wards of the state because their mothers are?
>
> (2) Can a transfer of such children be ordered by the director of public welfare to the division of charities without having the case brought before the juvenile court?
>
> (3) If a transfer is legally permissable, may the division of charities charge the expense for these children to the county from which the mothers were committed, as is done in other cases of dependent children?"

(1) It is clear that a person does not become a ward of the state unless a statute exists which provides for that status. No statute has been found which says that a child born to a woman who is an inmate of a state institution thereby takes the status of the mother. We must therefore conclude that the children you refer to are not wards of the state merely because their mothers are.

(2) Section 1352-3 G. C. says:

> "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 * * * homes *or any institution entitled*

*to receive children from the * * * board of administration* may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board * * *. 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 * * *."

Section 1352-4 G. C., as amended in 109 O. L. 362, says:

"The actual traveling expenses of any dependent, neglected, crippled or delinquent child and of the agents and visitors of said board shall be paid from funds appropriated to said board, 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, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep and for the education when necessary of a crippled child, shall be charged by the board of state charities 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 board."

Further provisions, of a general nature, on the subject of transfer from one institution to another are section 1841-4 G. C. (103 O. L. 176) and section 1841-2 G. C. (103 O. L. 681), which read as follows:

"Sec. 1841-4. Any minor having been committed to any state institution may be transferred by such 'The Ohio board of administration,' to any other state institution, whenever it shall appear that such minor by reason of its delinquency, neglect, insanity, dependency, epilepsy, feeble-mindedness, or crippled condition or deformity, ought to be in another institution. Such board before making transfer shall make a minute of the order for such transfer and the reason therefor upon its record, and shall send a certified copy at least seven days prior to such transfer, to the person shown by its records to have had the care or custody of such minor immediately prior to its commitment; provided, that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution."

"Sec. 1841-2. All persons committed to any institution under the control and management of the Ohio board of administration shall be considered as committed to the control, care and custody of such board. Upon resolution, duly entered upon the minutes of the board, any person committed to one of such institutions may, for reasons set forth in such resolution, be transferred to any other institution; provided that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution."

The department of public welfare, by virtue of section 154-57 G. C. (109 O. L. 124), succeeds to the powers and duties of the board of administration and board of state charities.

It will be observed that the above sections of the General Code providing for the transfer of minors have to do in each case with minors who have been *committed* to the board of administration or to some state institution under the jurisdiction of the board. Said sections have no application to children who are in the situation of those mentioned in your letter—to-wit children who are mere residents by sufferance at the state institution, and over whom the state has, as a matter of law, no right of custody or control.

You are thorefore advised that the director of public welfare is without authority to order the transfer of such children from the institution for feeble minded to the division of charities. In order to bring such children within the jurisdiction of said department of public welfare they must, if feeble minded, be committed by the probate court under section 1893 G. C.; or, if merely dependent, they must be committed by the juvenile court, pursuant to section 1653 G. C.

(3) Your third question has in effect been answered by what has already been said in answering your first and second questions. In addition, it is to be noted that section 1352-4 G. C. (109 O. L. 362) provides for charging board, etc., "to the county from which such child was *committed or transferred* as provided in sections 1352-3, 1352-5 and 1352-8" (the last cited section referring to crippled children committed to the board of state charities temporarily for treatment). In other words, the obligation of the county under section 1352-4 G. C. extends only to children *committed* to the state's care. Children received by state institutions informally and not by virtue of a statutory proceeding are not included in said section.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2405.

MOTOR VEHICLES—LIGHTS—VIOLATION OF AMENDED SENATE BILL NO. 156 (109 O. L. 219) IS IN DRIVING MOTOR VEHICLES UPON PUBLIC HIGHWAYS WHILE SUCH DEVICE IS OUT OF ADJUSTMENT—ACT DOES NOT REQUIRE MANUFACTURERS TO EQUIP PRODUCT WITH APPROVED LIGHTING DEVICE—PENALTY GOES TO USE.

Under the provisions of sections 6310-1, 6310-2 *and* 12614-1 *G. C., as contained in Amended Senate Bill No.* 156, *passed April* 29, 1921, *filed in the office of the Secretary of State May* 16, 1921, *relating to the regulations of lights upon motor vehicles, held,*

1. *That if a motor vehicle is equipped with a device approved by the Director of Highways and Public Works, it is nevertheless a violation of the terms of said act to drive such vehicle upon the public highways while such device is out of the adjustment prescribed by such Director.*

2. *That said act does not require manufacturers of motor vehicles to equip their product with an approved lighting device. The penalty of the act does not go to the manufacture or sale of vehicles, but to the use of them upon the public highways.*

COLUMBUS, OHIO, September 9, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

GENTLEMEN:—The receipt is acknowledged of your communication of recent date, reading: