

4882.

DIVISION OF CHARITIES—MAY TRANSFER TO ANOTHER INSTITUTION ANY OF ITS DEPENDENT WARDS—COUNTY CHILDREN'S HOME MAY TRANSFER GUARDIANSHIP OF DEPENDENT WARD TO ANOTHER INSTITUTION.

SYLLABUS:

1. *The Division of Charities of the Department of Public Welfare may make an agreement for the transfer to another qualified public or private association or institution of this state of any of its dependent wards.*

2. *The trustees of a county children's home may make agreement on forms prescribed and published by the Division of Charities to transfer the guardianship of an indigent ward permanently committed to such institution to any public, semi-public, or private association or institution of this state established for the purpose of caring for or placing children.*

COLUMBUS, OHIO, January 9, 1933.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads:

“Under Section 1352-3 of the General Code, the Division of Charities may accept the guardianship of dependent children by commitment by juvenile courts or by transfer from children's homes, etc. In accordance with section 1672 some of these commitments are permanent. In the case of transfers from institutions, it has been assumed that such procedure involves a responsibility until the child is 21 years old, or, in fact, as if a permanent commitment has been made by a court. Section 1352-12 grants guardians of children the right to surrender temporarily or permanently such children to a duly certified institution or agency.

First query: Does Section 1352-12 permit the Division of Charities to transfer any of its dependent wards to another qualified agency?

Second query: May a County Children's Home transfer the guardianship of a dependent ward, under Section 1352-12, to another agency or institution?

In reference to first query, it may be of interest to state that the Division of Charities has now a number of children permanently committed several years ago from a county which at that time had no public agency to care for dependent children. Over two years ago, a County Child Welfare Board was established in accordance with Section 3092. This Board is now functioning very successfully. Soon after its creation, all wards from that county under temporary commitment to the Division were by suitable action of the Juvenile Court committed to the new Board, thus relieving the Division of Charities from any further legal responsibility, but it was then held that no similar action was possible for the permanent commitments. It has been suggested by a member of the staff of the Division of Charities that Section 1352-12 provides a solution, depending upon the definition and application of the word 'guardian.'

As to the second query: There are a few child caring agencies that

operate on a state-wide basis. Some of the smaller institutions are willing to use these agencies for placement of some of their children in family homes. Some difficulty has arisen over the procedure in the case of permanent commitments. As times rather questionable methods have been followed to such an extent that the 'title of legal possession' of the child might be subject to adverse court decision even after adoption proceedings have been completed. If section 1352-12 can be used under such circumstances, it will greatly simplify the procedure."

Section 1352-3, General Code, to which you refer, reads in part as follows:

"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."

Section 154-57, General Code, transfers the duties of the board of administration or board of state charities to the Department of Public Welfare.

Section 1672, General Code, reads in part as follows:

"Whenever a child is committed to the permanent care of an institution, association or a state board, it shall ipso facto come under the sole and exclusive guardianship of such institution, association or state board, whereupon the jurisdiction of the court shall cease and determine, except that such institution, association or board, to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects."

Section 1643, General Code, reads in part as follows:

"When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment."

Section 1683, General Code, relative to the construction of the sections relative to juvenile courts, is as follows:

"This chapter shall be liberally construed to the end that proper guardianship may be provided for the child, in order that it may be educated and cared for, as far as practicable in such manner as best subserves its moral and physical welfare, and that, as far as practicable

in proper cases, the parent, parents or guardian of such child may be compelled to perform their moral and legal duty in the interest of the child."

Section 1352-12, General Code, mentioned in your inquiry, reads as follows:

"The parents, parent, guardian or other person or persons having the custody of a child, may enter into an agreement with any public, semi-public or private association or institution of this state established for the purposes of aiding, caring for or placing children in homes, and which has been approved and certified by the division of charities, department of public welfare, placing such child in the temporary custody of such institution or association; or such parent, guardian or other person may make an agreement surrendering such child into the permanent custody of such association or institution, to be taken and cared for by such association, or institution, or placed in a family home.

Such agreements provided for herein shall be in writing, on forms prescribed and furnished by the division of charities, department of public welfare and may contain any and all proper and legal stipulations for proper care of the child, and may authorize the association or institution when such agreements are for permanent care and custody to appear in any proceeding, for the legal adoption of such child, and consent to its adoption, as provided in section 8025 of the General Code. The adoption order of the judge made upon such consent shall be binding upon the child and its parents, guardian, or other person, as if such persons were personally in court and consented thereto, whether made party to the proceeding or not."

In view of the foregoing sections, it would seem that upon the permanent commitment of children to the Department of Public Welfare, the department stands in the position of guardian to such wards. It follows that the provisions of section 1352-12 would apply and therefore the Division of Charities of the Department of Public Welfare may make an agreement for the transfer to another qualified public or private association or institution of this state of any of its dependent wards.

As to your second inquiry concerning the transfer of the guardianship of an indigent ward of a county children's home to another agency or institution, I assume that such children's home has been certified by the Board of State Charities.

Section 1352-3, General Code, sets forth the procedure to be followed in the transfer of a ward of a children's home to the Department of Public Welfare.

Section 1672, above quoted, provides that when a court awards the permanent custody of a child to the care of an institution, etc., it shall ipso facto come under the sole and exclusive guardianship of such institution, association or state board, whereupon the jurisdiction of the court shall cease and determine with the exception of the possibility of recommitment of the child because of physical, mental or moral defects.

It would seem from the above quoted sections that a child permanently committed to a county children's home comes under the sole and exclusive guardianship of such institution and consequently the relationship of guardian of the person exists. This being true, the provisions of section 1352-12 may apply so as to allow the trustees of a county children's home to make agreement

on form prescribed and published by the Division of Charities to transfer the guardianship of an indigent ward permanently committed to such institution to any public, semi-public or private association or institution of this state established for the purposes of caring for or placing children in homes and which has been approved and certified by the Division of Charities.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4883.

JUVENILE COURT—MAY NOT ORDER PERMANENT SEPARATION OF CHILD FROM PARENTS—CHILD TEMPORARILY COMMITTED TO DIVISION OF CHARITIES SHOULD BE RETURNED TO PARENTS UPON ORDER OF COURT.

SYLLABUS:

1. *A juvenile court has no authority to make a permanent order of separation of a child from its parents, or in the case of an illegitimate child, from its mother, and follow the same with a temporary commitment to the Division of Charities.*

2. *Where a temporary commitment is made of a dependent child to the Division of Charities, such child should be kept in readiness for return to the parent or guardian upon order of the court.*

COLUMBUS, OHIO, January 9, 1933.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“For several years the Division of Charities has been asking juvenile courts for permanent separations of dependent children from parents, and children so separated have then been temporarily committed to the Division for placement. In the event that it has been possible later to place such children for adoption, the Division of Charities has then petitioned the court to change the temporary commitment to a permanent one.

Recently, some of the courts have questioned the practice of making permanent separations and then giving the Division of Charities a temporary commitment. A careful reading of Sections 1653 and 1672 fails to reveal any authority for the present practice of permanently separating a child from his family and then temporarily committing him to the care and custody of the Division of Charities and thus we are of the opinion that the courts which are raising objections to this procedure are within their rights. On the other hand, these statutes do not reveal any clause which could be interpreted as prohibiting such procedure.

The situation has reached the point where it seems necessary for the Division of Charities to have a formal Attorney General's opinion on the following question: