

shall have dispensed with competitive bidding. No appropriation account governed by this section can be lawfully expended in any other way, so that even in cases coming under the general power now under discussion the department of finance should secure competitive bids and let the contract to the lowest bidder, or else have competitive bidding dispensed with by action of the controlling board. The method of establishing the fact of competition is one which is to be prescribed by the auditor of state.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2492.

COUNTY DETENTION HOME—BOARD OF EDUCATION HAS AUTHORITY TO FORBID ATTENDANCE OF INMATES OF HOME AT PUBLIC SCHOOLS OF DISTRICT.

The board of education of a school district, in which is located a county detention home, established in conformity with section 1670 G. C., has authority to forbid the attendance of the inmates of the county detention home at the public schools of the district, since section 1670 G. C. provides that the superintendent and matron in a county detention home shall be persons "qualified as teachers of children."

COLUMBUS, OHIO, October 20, 1921.

HON. H. A. BURGESS, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, signed by the assistant prosecuting attorney of your county, requesting the opinion of this department upon the following question:

"We have in this county a detention home established in conformity with section 1670, General Code. This home is located in Warren township. There are several children of school age in the detention home and they have been attending the Warren township school. The board of education is now attempting to forbid the attendance of these children on the ground that they are delinquent children.

We desire your opinion as to whether a school board can reject children on this ground."

Section 1670 General Code, as amended in 103 O. L., page 864, reads as follows:

"Upon the advice and recommendation of the judge exercising the jurisdiction provided herein, the county commissioners shall provide by purchase or lease, a place to be known as a 'detention home' within a convenient distance of the court house, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected minors under the age of eighteen years may be detained until final disposition, which place shall be maintained by the county as in other like cases. In counties having a population in excess of forty thousand, the judge may appoint a

superintendent and matron, who shall have charge of said home, and of the delinquent, dependent and neglected minors detained therein. Such superintendent and matron shall be suitable and discreet persons, qualified as teachers of children. Such home shall be furnished in a comfortable manner as nearly as may be as a family home. So far as possible delinquent children shall be kept separate from dependent children in such home. The compensation of the superintendent and matron shall be fixed by the county commissioners. Such compensation and the expense of maintaining the home shall be paid from the county treasury upon the warrant of the county auditor, which shall be issued upon the itemized voucher, sworn to by the superintendent and certified by the judge. In all such homes the sexes shall be kept separate, so far as practicable."

In analyzing the above section in order to distinguish the "detention home" from what is known as a "children's home," it will be noted that the use of the detention home is limited to those children who are delinquent, dependent or neglected; that the superintendent and matron shall be suitable and discreet persons, *qualified as teachers of children*. That the children in a detention home are not all on the same basis as in a children's home is also indicated by the provision of section 1670 G. C., that

"so far as possible delinquent children shall be kept separate from the dependent children in such home."

Here is a direct mandate from the general assembly that these inmates of a detention home who are delinquent shall not be permitted to associate with those children detained in the detention home who are merely dependent. It must follow, therefore, that the legislative intent was that the delinquent children detained in the detention home should also be kept away from the children and pupils in the public school; it is significant that the general assembly has provided also in section 1670 that in addition to being suitable and discreet persons, the superintendent and matron shall be "qualified as teachers of children". This clearly means that there should be some teaching of the children in the detention home, for if otherwise, then the provision in the section that the superintendent and matron should be "qualified as teachers" would be mere surplusage. The superintendent and matron in those counties having a population in excess of 40,000, where a detention home has been established, are both appointed by the judge of the juvenile court and not by the board of education as are those teachers in children's homes; again, the compensation of the superintendent and matron shall be fixed by the county commissioners and not by the board of education and the maintenance of the detention home is to be provided for by the county commissioners and under their direction, whereas in the case of a children's home in a county, the latter is operated by a board of trustees of such children's home. These things are pointed out in order to show that the rights which run to children living in public and semi-public children's homes, as provided by law, are distinct from those rights which the general assembly has given to children who are detained in a detention home. That is to say, the detention home is an entirely distinct proposition from what is known in Ohio law as public or semi-public children's homes. In the latter children are often received at a very early age and spend a number of years in such children's home, while with the detention home the residence is presumed to be but temporary, that is, until final disposition is made of their cases (1670 General Code).

Bearing upon the education of children who live in county, semi-public or district children's homes, the following sections of the law are pertinent:

"*Sec. 7676:* The inmates of a county, semi-public or district children's home shall have the advantages of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, township, village or special board of education, having jurisdiction over the school district within which such home is located. Such board of education shall employ with the approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

The manner of providing for the report to the county auditor and the cost of educating inmates in children's homes and how determined and how paid, both as regards children from the county and from another county, is set forth in sections 7677 and 7678 of the General Code.

Section 7681 reads in part as follows:

"The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district * * *. Inmates of the proper age of county, semi-public and district children's homes shall be admitted after the manner described in section 7676. The board of education may admit the inmates of a private children's home or orphan asylum located in the district, with or without the payment of tuition fees, as may be agreed upon. * * *"

It will be noted in section 7681, *supra*, that while reference is made to county, semi-public and district children's homes, and also private children's homes and orphan asylums, no reference whatever is made to the children who might be detained in a detention home established under the provisions of section 1670 G. C.

"*Sec. 7690:* Each board of education shall have the management and control of all the public schools of whatever name or character in the district. * * *"

"*Sec. 7778:* * * * The board of education in any school district shall admit without tuition charge any child actually resident in the district who would otherwise be deprived of school privileges in this state." (109 O. L., p. 393).

It is true that the legislative intent as regards the education of juveniles is to be construed liberally, for section 1683 G. C. (speaking of the chapter of the statutes under the title of "Juvenile Court") says:

"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

subverses 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."

But the general assembly also had in mind that the good of all the children should be taken into consideration and that it might not be best that those children of good morals should be compelled to mingle with those who might be incorrigible or vicious and by such conduct come within the pale of the juvenile court. Thus while section 3088 G. C. provides that the inmates of county, semi-public and district children's homes shall be given an elementary education after the manner described in section 7676 G. C., a limitation has been put upon what kind of children may be admitted to the children's home, for section 3089 G. C. reads as follows:

"The home shall be an asylum for children under the age of eighteen years, of sound mind and not morally vicious and free from infectious or contagious diseases, who have resided in the county not less than one year, and for such other children under such age from other counties in the state where there is no home, as the trustees of such home and the persons or authority having the custody and control of such children, by contract agree upon, who are in the opinion of the trustees, suitable children for admission by reason of orphanage, abandonment or neglect by parents, or inability of parents to provide for them. In no event shall a delinquent or incorrigible child be committed to or be accepted by such home. If an inmate of such home is found to be incorrigible, he or she shall be brought before the juvenile court for further disposition. Parents or guardians of such children shall in all cases where able to do so, pay reasonable board for their children received in such children's home."

Among other significant words in this section are these:

"In no event can a delinquent or incorrigible child be committed to or be accepted by such home. If an inmate of such home is found to be incorrigible, he or she shall be brought before the juvenile court for further disposition. * * *"

In the case which you cite these children have been brought before the juvenile court "for further disposition" or else they would not be in the county detention home located in Warren township in your county. Your statement of facts says that the board of education of the Warren township school district is now attempting to forbid the attendance of these children detained in the county detention home located in Warren township from the public schools of a township rural school district. It would appear from a careful comparison of the statutes governing children's homes and the limitation upon children admitted, appearing therein, with the statutes appearing in the juvenile code, that the board of education is within its rights in declining to receive these children from the detention home on the basis that they are not residents of the district, but are wards of the court; that section 1670 G. C. provides that they shall be under a superintendent and matron who are "qualified as teachers of children" and that it is the duty of the board of education to protect the children in the public schools from association

with those children who more than likely have been taken from the public schools in their own particular school district and placed in the county detention home. To illustrate, if a boy has been taken from the schools in the Warren city school district and placed in the county detention home, it would seem rather inconsistent to permit such boy, possibly incorrigible or delinquent, to be sent to the public schools in the rural school district and mingle with the children in such district, because the detention home was located there, when he was not permitted to attend the public schools in the city and had likely been taken therefrom by the attendance officer or the probation officer.

The following former holdings of this department are pertinent upon this question:

"In counties having a population of less than forty thousand the county commissioners shall employ or appoint persons necessary to the care of the children therein and the maintenance of the detention home." (Opinion 1949, p. 1623, Vol. II, Opinions of the Attorney-General for 1916).

In this opinion the then Attorney-General also said:

"By section 1670 G. C., supra, it is provided that a detention home established thereunder 'shall be maintained by the county as in other like cases.' It is difficult to point to a very like case. Both the infirmary and the children's home have some similarity to a detention home and the county jail in some respects as well. No two of these are exactly similarly maintained."

In Opinion 1049, found at page 966, Vol. I, 1914, the syllabus reads:

"Under the provisions of section 7676, General Code, the board of education of the respective school districts of the state wherein are located county or children's homes, are required to provide schools and sufficient educational facilities for the inmates of such county or children's homes, either by the establishment of special schools located at such county or district children's homes or in the regular schools of the respective districts.

Under section 7681, General Code, the public schools of the state are free to the inmates of orphan asylums located in such respective school districts, regardless of whether or not such orphan asylums are private or public institutions."

The syllabus of Opinion 775, page 1630 of Vol. II, Opinions of the Attorney-General for 1915, reads as follows:

"Children's homes should not be used for the detention of children including delinquents who are under the jurisdiction of the juvenile court, but whose status has not been determined by the court, as a general rule. However, trustees of children's homes should exercise their discretion under section 3090 G. C., to the end that dependent and neglected children should be provided with shelter if no positive reason to the contrary exists.

Detention homes should not be erected on the premises of children's homes."

In the body of this opinion the then Attorney-General said:

"It would appear, therefore, that it was clearly intended that the detention home is to be a separate and distinct institution in charge of a superintendent and matron, and that there is no provision of law whereby the children's home, or a part thereof, can be utilized for the purpose of a detention home. The grounds within the enclosure surrounding a children's home are as much a part of the home as the building itself, and to place on the premises of a children's home a building to be used as a detention home, which detention home, of course, is used for detaining delinquents, dependent and neglected minors under the age of eighteen years while their cases are being investigated by and until they are disposed of by the juvenile court, would constitute a violation of section 3089 of the General Code * *."

After a careful analysis of the sections of the statutes bearing upon the question submitted by you, and the prior holdings of this department, you are advised that the board of education of a school district, in which is located a county detention home, established in conformity with section 1670 G. C., has authority to forbid the attendance of the inmates of the county detention home at the public schools of the district, since section 1670 G. C. provides that the superintendent and matron in a county detention home shall be persons "qualified as teachers of children".

Respectfully,

JOHN G. PRICE,
Attorney-General.

2493.

APPROVAL, BONDS OF UPPER SCIOTO DRAINAGE AND CONSERVATION DISTRICT IN AMOUNT OF \$266,900.

COLUMBUS, OHIO, October 22, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2494.

PHYSICIANS AND SURGEONS—OSTEOPATHIC PHYSICIANS AUTHORIZED TO SIGN DEATH CERTIFICATE—LIMITED PRACTITIONERS OF MEDICINE NOT AUTHORIZED TO SIGN DEATH CERTIFICATE.

1. *Osteopathic physicians who have met the educational requirements of statute are authorized to sign death certificates.*

2. *Limited practitioners of medicine are not authorized to sign death certificates under the provisions of General Code section 210.*

COLUMBUS, OHIO, October 24, 1921.

HON. HARRY H. SNIVELY, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your request of recent date received in which you ask the opinion of this department as follows: