

OPINION NO. 66-148

Syllabus:

1. A child welfare board may not legally request support payments from parents who have voluntarily surrendered their children to the board under permanent surrender.

2. A child welfare board may not legally request support payments from parents whose children have been taken from them permanently by the courts.

To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio
By: William B. Saxbe, Attorney General, September 1, 1966

Your letter of request for my opinion reads in part as follows:

"The Coshocton County Child Welfare Board has requested an opinion from this office on the following questions:

"(1) 'Can a child welfare agency legally request support payments from parents who have voluntarily surrendered their children to the agency under permanent surrender, said children not yet having been placed for adoption?'

"(2) 'Can a child welfare board legally request support payments from parents whose children have been taken from them permanently by the court, said children not yet having been placed for adoption?'

"This office informed said board that:

"'As to Question No. 1, it is my opinion that the parents of a child voluntarily surrendered to the agency are legally responsible for the support of said child and in my opinion your agency has an obligation to request and compel, if necessary, that the parents support the child under these circumstances.'

"'As to Question No. 2, it is my further opinion that the legal responsibility of parents is no different under these circumstances, where the child has been taken from the parents, than it would be if the parents voluntarily surrendered the child, and you would be

under the same obligation to obtain payment as indicated above.'

"Subsequently, the Coshocton County Child Welfare Board was notified by a district welfare supervisor from the Ohio State Department of Welfare, Division of Social Administration that the opinion that I had rendered in this matter was inconsistent with their manual 'Child Care in Ohio', Rule 5.4, Page 12, which reads as follows:

"'No agency shall attempt to collect support payments from a parent for the cost of care incurred while a child is in the permanent custody of the agency.'

"The district supervisor further informed the Child Welfare Board that Rule 5.4 must be followed by the Child Welfare Board and indicated if it was not followed that federal funds would be placed in jeopardy.

"In view of this inconsistency, this office requests your opinion."

The rules in this manual "Child Care in Ohio" have been promulgated by the Division of Social Administration of the Ohio State Department of Public Welfare pursuant to Section 5103.03, Revised Code, which reads in part as follows:

"The division of social administration shall make such rules and regulations as are necessary for the adequate and competent management of institutions or associations as defined in section 5103.02 of the Revised Code.
* * *

The only question to be determined, then, is whether Rule 5.4, which applies solely to situations involving permanent custody, is inconsistent with the statutes relating to permanent custody, or, the more frequently-used term, permanent surrender. In determining whether Rule 5.4 is inconsistent with the statutes governing permanent custody, it becomes necessary to decide which of the statutes relating to the custody of children apply to permanent surrender and which apply to temporary surrender.

Section 5103.15, Revised Code, provides for the voluntary surrender of the custody of a child, either permanently or temporarily, as follows:

"The parents, guardian, or other persons having the custody of a child, may enter into an agreement with any association or institution of this state established for the purposes of aiding, caring for, or placing children in homes, which has been approved and

certified by the division of social administration, whereby such child is placed 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.

" * * * * * "

The involuntary surrender of the custody of a child, that is, the taking of the child from the parent or guardian by court order, is set out in Section 2151.35, Revised Code, which provides in part:

" * * * If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

" * * * * * "

"(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to the youth commission or to a county or district training facility created under section 2151.65 of the Revised Code, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;"

Permanent surrender, or custody, as used in Ohio in both practice and theory, means that the child welfare board or agency or institution has assumed the exclusive care of the child, the parent or guardian having given up all rights to the child either voluntarily or pursuant to court order. Temporary custody or surrender, however, means that the arrangement is one existing for a limited time, of a changing nature, or, simply, not permanent. The vast majority of children surrendered under the two statutory sections above quoted are surrendered on a temporary basis. The notion or use of permanent surrender is so limited, in fact, that the statutes pertaining to custody are intended to refer only to temporary surrender unless it is specifically stated that permanent surrender is being considered.

Thus, Section 5153.16 (B), Revised Code, within the powers and duties of a county child welfare board, is referring to tem-

porary custody only, except for the last clause which states specifically that it is referring to permanent custody. Furthermore, Section 5153.19, Revised Code, which provides for the determination of the ability of a parent or guardian to make support payments in situations wherein the child has been voluntarily surrendered, and Section 2151.36, Revised Code, which allows the court to determine the ability of a parent or guardian to make support payments in situations in which the court has ordered the surrender of the child, refer only to arrangements involving temporary custody, since permanent custody is not mentioned, and have no bearing on situations involving permanent custody.

As mentioned previously, when the custody of a child is surrendered on a temporary basis, the parent or guardian necessarily retains some rights to the child; therefore, it would be logical that he would retain some duties, such as the making of support payments. When the custody of a child is surrendered on a permanent basis, however, the parent or guardian has relinquished all rights to the child and, likewise, has retained no duties or obligations concerning the child. Thus, there is no duty for the parent to pay support for the child, and there is no legal obligation by which the parent can be asked for support payments.

Not only do the parents give up all rights and duties to a child surrendered permanently, but, even the juvenile court's jurisdiction is completely terminated pursuant to Section 2151.38, Revised Code:

"When a child is committed *** to the permanent custody of the department of public welfare, *** the order shall state that such commitment is permanent and the jurisdiction of the juvenile court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the division or any county department, board, or certified organization having such permanent custody makes application to the court for the termination of such custody, the court upon such application, after notice and hearing and for good cause shown, may terminate such custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. * * *"

Therefore, it is my opinion and you are hereby advised that:

1. A child welfare board may not legally request support payments from parents who have voluntarily surrendered their children to the board under permanent surrender.
2. A child welfare board may not legally request support payments from parents whose children have been taken from them permanently by the courts.