

to cover the faithful performance of the duties of the principal as resident division deputy director, assigned to Division No. 12, Cuyahoga County.

You have also submitted a bond in the penal sum of \$5,000, executed by J. K. Patterson as principal, and the Globe Indemnity Company as surety, to cover the faithful performance of the duties of the principal as resident district deputy director assigned to Butler County.

Finding said bonds to have been executed in proper legal form, I have approved the same as to form, and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1088.

APPROVAL, BONDS OF GENEVA ON THE LAKE; ASHTABULA COUNTY
—\$25,000.00.

COLUMBUS, OHIO, October 22, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1089.

APPROVAL, BONDS OF SALT ROCK TOWNSHIP, MARION COUNTY—
\$3,500.00.

COLUMBUS, OHIO, October 22, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1090.

JUVENILE COURT—ASSUMING AND RELINQUISHING JURISDICTION
OF ILLEGITIMATE CHILD—RIGHT OF FOREIGN COUNTY WHERE
MOTHER AND CHILD RESIDE TO ASSUME JURISDICTION.

SYLLABUS:

Where the Juvenile Court of A County assumes jurisdiction over an illegitimate child, and subsequently relinquishes such jurisdiction, the provisions of Section 1643, General Code, do not operate to bar the Juvenile Court of B County, where the child and mother have established a residence, from assuming jurisdiction over the child under facts and circumstances constituting dependency.

COLUMBUS, OHIO, October 22, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication which reads as follows:

"Will you kindly advise me which Juvenile Court has jurisdiction over the twin babies in the following case?"

The mother was married 12-15-17 and divorced from her husband in Vinton County, then her residence, on 5-2-24. (Divorce verified). The mother is said to be distinctly feeble-minded and for that reason unable to recall exact dates of her comings and goings.

Twin babies were born at a maternity home in Franklin County 4-5-25. The father of these children was found by court action in Franklin County on 11-2-26 to be a resident of Vinton County.

Maternal grandparents have lived in Athens County since 1925. Children's mother has lived with them part of the time in Athens County, part of the time she has lived in Vinton County and part of the time she has lived in Franklin County.

The mother has now remarried and is living with her husband in Franklin County, of which she has been a continuous resident now for two years. The stepfather is unwilling to support the twin children. Athens, Vinton and Franklin Counties all refuse to accept responsibility for the children, one of whom is now living with the mother in Franklin County, which is said to be an improper home where the child is neglected; the other child is temporarily at the Receiving Home of the Division of Charities, Department of Public Welfare, but is there without commitment from any Juvenile Court.

A summary of the dealings of social workers concerned in the case is attached. More detailed findings are on file at the Division of Charities, Department of Public Welfare."

Subsequent information from your department is to the effect that the facts, chronologically arrayed, are as follows:

December 15, 1917,

E. M. married to R. N. in Vinton County. Two children born of marriage.

May 2, 1924,

E. M. and R. N. divorced in Vinton County. E. M. goes to home of father, J. M., in Athens County, remaining there off and on until—

July, 1924,

when E. M. went to work for F. R. in Vinton County, where she became pregnant.

February, 1925,

E. M. went to Franklin County, where twin children, Robert and Ruth, were born on

April 5, 1925,

at Florence Crittenden Home, Franklin County, both children being definitely physically and mentally defective, as is their mother. E. M. remained with children until January 6, 1926.

December 8, 1925,

State Bureau of Juvenile Research found E. M., age 28, had a mental age of 5 years, 6 months, on a Stanford-Binet test.

January 6, 1926,

E. M. deserted the children at the Florence Crittenden Home. The children remained at the home until

January 16, 1926,

when Miss Zella Stricker, of the Florence Crittenden Home delivered the children to Juvenile Court of Vinton County, which made the following journal entry:

"Juvenile Court, Vinton County, Ohio.

In the Matter of Robert D. M. and Ruth D. M. Commitment for Temporary Care —A— Dependent Children.

This 16th day of January, 1926, Robert D. M. and Ruth D. M. were brought before the court, complained of by Zella F. Stricker, with being dependent children and the court having instituted an investigation, and having heard all the evidence, finds :

That the law has been duly complied with in this case :

That the said children were born on or about the 5th day of April, 1925, in the city of Columbus, county of Franklin, State of Ohio ;

That the name, residence, nationality and occupation of each parent is as follows :

Father—F. R., Knox Township, Vinton County, Farmer.

Mother—E. M., present address unknown, Housekeeper.

The said children are dependent in this, that the case against the father is now in litigation and has not been finally disposed of, and that the mother is unable to support these children, and therefore come into the jurisdiction of this court, being in all respects within the provisions of the law concerning dependent and delinquent children.

The court, finding further that it is for the best interests of said children that their mother be deprived of their care and custody temporarily, for the reason that she is now unable to care for and support the said children, therefore orders that said children be committed to the temporary care and custody of the State of Ohio, Department of Public Welfare, Division of Charities, it appearing that said children are suitable persons to be so committed.

It is further ordered that said children be conveyed to and delivered to the said State of Ohio, Department of Public Welfare, Division of Charities, and due return thereof be made to this court.

Charles O. Chapman,
Judge of Juvenile Court."

November 6, 1926

Franklin County Juvenile Court, in bastardy proceeding instigated by Florence Crittenden Home of Columbus, found F. R., of Vinton County, to be reputed father of the children, Robert and Ruth. This judgment was later affirmed by Court of Appeals ; Supreme Court overruled a motion to certify the record. The \$500.00 cash bond put up by F. R. was consumed in part by costs and the balance turned over to the Florence Crittenden Home. No further order was made against F. R.

January 16, 1927,

Robert M. and Ruth M. committed to Department of Public Welfare for temporary care for period of twelve months from date, by the Juvenile Court of Vinton County.

January 16, 1928,

Robert M. and Ruth M. committed to Department of Public Welfare for temporary care for period of twelve months from date, by Juvenile Court of Vinton County.

January 16, 1929,

Robert M. and Ruth M. committed to Department of Public Welfare for temporary care for period of one year from date, by Juvenile Court of Vinton County.

March 12, 1929,

Juvenile Court of Vinton County issued order terminating commitment of Robert M. and Ruth M. to care of Department of Public Welfare "for

the reason that children returned to Vinton County Probate Court and placed in Vinton Children's Home."

April 3, 1929,

Juvenile Court of Vinton County recommitted Robert M. to Department of Public Welfare for temporary care.

May 2, 1929,

Juvenile Court of Vinton County reconsidered case of Robert M. and rescinded the order of April 3, 1929, supra, and ordered that the Department of Welfare be deprived of the care of Robert M. permanently for the reason that "legal residence of child found to be in Athens County and that Athens County is responsible for child." In a letter to the Department of Welfare, transmitting this order, Judge A. I. Garrison, of Vinton County, said:

"We hereby wish to terminate the commitment of Robert M., owing to the fact that Athens County has acknowledged Robert M. and Ruth M. to be legal residents of Athens County. Ruth M. has already been transferred to the Athens County Children's Home."

We are further advised by you that the Juvenile Court of Athens County asserts that it has at no time recognized Ruth M. and Robert M. as legal residents, or made any journal entry pertaining to said children.

I am entirely in accord with the eloquent tribute to the home as a place for rearing children, announced by Mr. Justice Brewer, in *In re. Bullen*, 28 Kans. 577, but in this case it appears that the mother is mentally incompetent, that both the children are feeble-minded, and that their stepfather is unwilling to have either child in his home.

I note that one of the children is now residing with its mother in Franklin County and the other is merely a resident by sufferance at a state institution, over whom the state has, as a matter of law, no right of custody or control, the child having been committed neither by the Probate Court under Section 1893, General Code, as feeble-minded, nor by the Juvenile Court, pursuant to Section 1653, General Code.

It appears that since the Vinton County Juvenile Court assumed jurisdiction of the children under a dependency affidavit on January 16, 1926, the mother has become a resident of Franklin County. You state, in fact, that she has re-married in Franklin County and has been a continuous resident of Franklin County with her husband for more than two years last past. In other words, the mother of the children now has a legal settlement in Franklin County.

It was held in 19 O. N. P. (N. S.) 438, that the domicile of a child is changed when the domicile of the parent who has legal custody of such child is changed.

Section 1645, General Code, reads:

"For the purpose of this chapter, the words 'dependent child' shall mean any child under eighteen years of age who is dependent upon the public for support; or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who begs or receives alms; or who is given away or disposed of in any employment, service, exhibition, occupation or vocation contrary to any law of the state; who is found living in a house of ill fame, or with any vicious or disreputable persons or whose home, by reason of neglect, cruelty or depravity on the part of its parent, step-parent, guardian or other person in whose care it may be, is an unfit place for such child; or who is prevented from receiving proper education or proper physical, mental, medical or surgical examination and treatment because of the conduct, inability or neglect of its parents, step-parent, guardian or other person in

whose care it may be; or whose condition or environment is such as to warrant the state, in the interest of the child, in assuming its guardianship."

Under the provisions of Section 1645, supra, any child under eighteen years of age who is dependent upon the public for support, or who is destitute, homeless or abandoned, is a dependent child within the meaning of the provisions of Section 1642, General Code, and at this point it may be significantly noted that a child may, under the provisions of Section 1645, General Code, supra, either have a home or be homeless, and yet in either case be dependent upon the public for support.

In my opinion No. 755, rendered to you under date of August 17, 1929, it was stated in the syllabus:

"A Juvenile Court has jurisdiction to declare any child to be a dependent which is found within the county under facts and circumstances which constitute dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court."

A principle of law that has been recognized from time immemorial, is that the court first obtaining jurisdiction of the subject matter retains exclusive jurisdiction of the subject matter and authority until final disposition, free from interference by any other tribunal.

In line with this principle, Section 1643, General Code, provides that when a child under the age of eighteen years comes into the custody of the Juvenile Court, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until it attains the age of twenty-one. In the instant case, however, the Vinton County Juvenile Court has relinquished jurisdiction and held that as a matter of fact, it never did have jurisdiction over the twin children.

Although the Vinton County Juvenile Court, in its order of May 2, 1929, terminating commitment to the Department of Public Welfare, found that Athens County is responsible for Robert M., I am unable to agree with this conclusion. Under the statement of facts before me, Athens County does not appear to enter into the question of jurisdiction, the mother of the children not having had a legal settlement in that county at any time since the birth of the twins.

Although I have before me no record of an order of Vinton County Juvenile Court pertaining to Ruth M., similar to the one concerning Robert M., dated May 2, 1929, in which it was found that legal residence of the child was not in Vinton County, I assume that such an order was issued, inasmuch as you state that Ruth M. is with her mother in Franklin County, and this opinion is predicated upon that assumption.

Specifically answering your question, I am of the opinion that the Franklin County Juvenile Court would now have jurisdiction of the children, Robert and Ruth M., were the matter of their dependency properly brought before it.

Respectfully,

GILBERT BETTMAN,
Attorney General.