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1. CHILDREN'S HOME—BOARD OF TRUSTEES OF DISTRICT—NO AUTHORITY TO CONTRACT TO BOARD CHILDREN IN HOME WITHOUT PLACEMENT THEREIN BY COUNTY WELFARE DEPARTMENT OR JUVENILE COURT.
2. JUVENILE COURT—MAY COMMIT CHILDREN DIRECTLY TO DISTRICT CHILDREN'S HOME—SECTION 1639-30 G. C.

SYLLABUS:

1. The board of trustees of a district children's home is without authority to contract to board children in said home without having such children placed therein by the county welfare department or the juvenile court.

2. The juvenile court, pursuant to Section 1639-30 of the General Code of Ohio, may commit children directly to a district children's home.

Columbus, Ohio, November 22, 1950

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

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

"The State Department of Public Welfare, through its Division of Social Administration and under the authority of Section 1352-1 of the General Code, passes upon the fitness of children's homes to receive and care for children committed to such homes.

"Stark and Columbiana Counties operate a district children's home, under the provisions of Section 3109 to 3126, inclusive, of the General Code, which is known as the Fairmont Children's Home and which is located near Alliance, Ohio. In each of these counties, a County Welfare Department has been established, and there is no Executive Secretary of a County Child Welfare Board. Some question has arisen over the duties and responsibilities of the County Welfare Director and of the trustees of the Fairmont Children's Home. In connection with our licensing authority, we desire your opinion on the following:

"1. May the trustees of a district children's home contract to board children in such a home without having such children placed therein by the County Welfare Department or the Juvenile Court?

"2. May a Juvenile Court commit children directly to a district children's home?

"3. If the trustees of a District Children's Home have authority to admit children into such home without having been committed thereto by a Juvenile Court, or without being placed therein by a County Welfare Department, does the County Welfare Department have exclusive authority to remove, transfer, and discharge such children from a district children's home? I refer you to Section 3070-25 and Section 3126 of the General Code."

House Bill No. 418, passed by the 96th General Assembly, 121 O. L. 538, was adopted for the purpose of recodifying the statutes relating to children by amending certain of Sections 3109 to 3126, inclusive, by enacting supplemental Sections 3070-1 to 3070-36, inclusive, of the General Code, and by repealing certain sections of the General Code.

It appears from your communication that the county welfare department was established subsequent to the establishment of a district children's home. Be that as it may, Section 3070-4 of the General Code provides that:

"In any county in which a department of welfare has been established and in which there is no child welfare board or board of trustees of a county children's home, at the time of the effective date of this act, such department shall, upon the effective date of this act, have all the powers and duties of a child welfare board, and neither such board shall thereafter be created."

By virtue of Section 3070-4, *supra*, the county welfare department is now vested with all the powers and duties of a child welfare board, in view of the fact that no board of trustees of the county children's home or a child welfare board was in existence at the time of the adoption of House Bill 418.

At the outset it must be kept in mind that a board of trustees of a district children's home is a creature of statute and has only those powers specifically granted to it by law or such as may necessarily be implied therefrom.

The powers and duties of the board of trustees of a district children's home are specifically provided for in Section 3126 of the General Code, and it reads:

"The trustees of a district children's home shall appoint the superintendent thereof. Before entering upon his duties the superintendent shall give a bond to the trustees in such sum as they shall fix with sufficient surety, conditioned upon the faithful performance of his duties and the full and faithful accounting of the funds and properties coming into his hands.

"The superintendent shall appoint all employes. All employes of the home except the superintendent shall be in the classified civil service.

"The superintendent, under the supervision and subject to the rules and regulations of the trustees, shall control, manage, operate and have general charge of the home and shall have the custody of its property, files and records.

"The children to be admitted for care in such home, the period during which such children shall be cared for therein and the removal and transfer of children therefrom shall be determined by the executive secretaries of the respective counties, subject to the terms of the agreement, surrender or commitment respecting any child.

"Laws relating to the operation, maintenance and management of a county children's home shall, so far as applicable and except as otherwise provided herein, govern the operation, maintenance and management of district children's homes."

It must be observed that Section 3126, *supra*, in no way grants authority to the board of trustees of the district children's home to enter into a contract to board children in such a home without having such children placed therein by the county welfare department or the juvenile court. However, Section 3070-23, General Code, implies that contracts may be entered into with certain organizations. Said section reads as follows:

"If there is no children's home in the county or if the facilities for institutional care are inadequate, the board of any county may, subject to the approval of the division and the board of county commissioners, enter into an agreement with the board or a certified organization located in another county or with the trustees of any district or semi-public children's home, or with any agency or institution outside the state for the furnishing of institutional care to children of the county."

Now as to the authority of the juvenile court to commit children directly to a district children's home, Section 1639-30 of the General Code provides in part that:

" * * If the court shall find that the child is delinquent, neglected, or dependent, it may by order duly entered proceed as follows:

"1. Place the child on probation or under supervision in its own home or in the custody of a relative or in an *institution* or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided, however, that the court may place delinquent children on a free or wage basis in uncertified foster homes.

"2. Commit the child temporarily or permanently to the division of social administration of the state department of public welfare, or to a county department, board or certified organization, 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. * * *"

There can be no doubt that a district children's home is an institution for the care of children within the meaning of Section 1639-30, *supra*.

Section 1639-57 of the General Code provides that :

“It is hereby made the duty of the county commissioners to appropriate such sum of money each year as will meet all the administrative expense of the court exercising the powers and jurisdiction conferred in this chapter, including reasonable expenses of the judge and such officers and employes as he may designate in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education and support of neglected, dependent and delinquent children, other than children entitled to aid under the aid to dependent children law, section 1359-31 et seq., General Code, and for necessary orthopedic, surgical and medical treatment, and special care as may be ordered by the court, for any neglected, dependent or delinquent children, as herein provided. *All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge of the court.*”
(Emphasis added.)

In view of the foregoing, it is my opinion that :

1. The board of trustees of a district children's home is without authority to contract to board children in said home without having such children placed therein by the county welfare department or the juvenile court.
2. The juvenile court, pursuant to Section 1639-30 of the General Code of Ohio, may commit children directly to a district children's home.

Respectfully,

HERBERT S. DUFFY,
Attorney General.