

maintain such institution for delinquent children in the county than for the county commissioners to establish and maintain within the county a penitentiary to which felons of the county were confined.

Therefore, in specific answer to your question it is my opinion that—the county commissioners of Hamilton County are not authorized to lease, operate, manage and maintain the Hillcrest and Glenview Schools as correctional institutions for juvenile delinquents. However, if the judge of the Division of Domestic Relations of the Court of Common Pleas of Hamilton County advises and recommends the establishment of a detention home, it will be within the province of the county commissioners to lease from the City of Cincinnati either the Hillcrest or Glenview School, or both, for the establishment of a detention home, provided that such buildings are within a convenient distance from the court, not used for the confinement of adult persons charged with criminal offenses and can be furnished and carried on as far as possible as a family home, and also that the building is not needed by the City of Cincinnati for municipal purposes, and the court will be authorized to commit a delinquent child to such detention home, in the same manner as it would in case of commitment to any other “suitable public institution.”

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2804.

BOARD OF COUNTY COMMISSIONERS—MANDATORY DUTY TO PROVIDE JUVENILE DETENTION HOME WITHIN CONVENIENT DISTANCE OF JUVENILE COURT—SECTION 1639-22, GENERAL CODE—QUARTERS MAY BE MAINTAINED AT COUNTY HOME—SUPERINTENDENT OR MATRON APPOINTED BY JUDGE OF JUVENILE COURT—PAID ON SALARY OR PER DIEM BASIS—SEE OPINION 2803, AUGUST 4, 1938.

**SYLLABUS:**

1. *It is mandatory that the board of county commissioners provide a juvenile detention home within a convenient distance of the Juvenile Court under Section 1639-22, General Code.*

2. *Detention quarters may be legally and properly maintained at the county home, in charge of a superintendent or matron appointed by the*

*judge of the juvenile court, to be paid either on a salary or a per diem basis.*

COLUMBUS, OHIO August 6, 1938.

HON. MARCUS SHOUP, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR: This will acknowledge your recent letter requesting my opinion as follows:

“For the past several years detention quarters, until final disposition of the matters, have been provided for juvenile delinquents at the Greene County Home, which is located about two miles west of Xenia. There is no available or proper place that can be employed as such in the county jail to comply with the provisions of Section 1639-22 G. C. Moreover, there is no present place for purpose of purchase or lease, and there are not sufficient funds on hand for that expenditure.

The Judge of the Juvenile Court has made recommendations to the Commissioners for the retaining of the present quarters in the County Home and has made other suggestions for some minor renovations and repairs for the improvement of said quarters. He further recommends the appointment of a superintendent or matron, subject to call, to be paid a regular salary, or in the alternative on a per diem basis, when such services are required from time to time upon the commitments of such juvenile delinquents. The court feels that it would be more practical to have the Detention Quarters at the county home, than the arrangement of placement temporarily in private homes. It might also be noted that there is no incorporated institution or agency in Greene County as designated under paragraph 3 of Section 1639-22.

I have been unable to find any rulings on this particular question as to the usage of the County Home for that purpose.

1. Can said detention quarters as recommended by the court, be legally and properly maintained at the County Home in charge of a superintendent or matron appointed by the court and to be paid as other employees, on a set salary basis, or in the alternative on a per diem basis for the time employed for that purpose when such services are needed?

I would appreciate your opinion in this respect.”

Your question resolves itself into this proposition: Can the Greene County Home be used in part for a juvenile detention home upon the advice and recommendation of the judge of the juvenile court and should the county commissioners make available sufficient funds to pay a superintendent or matron on a salary or per diem basis, depending upon the amount of services necessary to be performed by a superintendent or matron?

Section 1639-22, General Code, is controlling of this question and the following language of the second, third and fourth paragraphs of such section should be noted:

“Upon the advice and recommendation of the judge of the court exercising the powers and jurisdiction conferred in this chapter, 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, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected children may be detained until final disposition, which home shall be maintained as provided in this act.

The court may arrange for the boarding of such children temporarily in private homes, subject to the supervision of the court, or may arrange with any incorporated institution or agency, to receive for temporary care children within the jurisdiction of the court.

In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron and other necessary employees for such home in the same manner as is provided for the appointment of other employees of the court, their salaries to be fixed and paid in the same manner as the salaries of other employees. The necessary expenses incurred in maintaining such detention home shall be paid by the county.”

It appears that juvenile detention quarters for the past several years have been maintained at the county home, evidently in space set off for this purpose and furthermore there is no incorporated institution or agency in the county to receive for temporary care children within the jurisdiction of the juvenile court.

The language of the statute is clear that the county commissioners, upon the advice and recommendation of the judge exercising juvenile powers, must provide a Juvenile Detention Home, and that the judge exercising juvenile powers may appoint a superintendent or matron and fix their rate of compensation whether it be on a salary or a per diem basis. It is, therefore, mandatory that the county commissioners shall provide a juvenile detention home within a convenient distance of the court. It may be seen, therefore, that the county commissioners may or may not set apart space in the county home for use as a juvenile detention home, within their discretion and a proper compliance with Section 1639-22, General Code.

It is to be noted that the statute states that the county commissioners shall provide such a home "by purchase or lease." It is a fundamental rule of statutory construction that an express power includes within it a lesser power. It can readily be seen that it is mandatory upon the county commissioners to provide a juvenile detention home by purchase or lease upon the advice and recommendation of the judge of the juvenile court. This case presents a situation where the county already owns the space in the county home to be used as a detention home, and certainly the county commissioners have the lesser power to provide for detention quarters in the county home, and in addition thereto the power to renovate and repair such space to be so used.

I find no statutory inhibition against such a use of the county home. It would follow then that the county commissioners do have the power to set up and to maintain within the county home space to be used for detention purposes in connection with the juvenile court, upon the advice and recommendation of the juvenile judge. It is equally clear by a reading of the statute that the judge of the juvenile court may appoint a superintendent or matron of the detention home when such a home is established by virtue of Section 1629-32 of the General Code, and fix the rate of compensation, dependent upon the amount of services necessary either by the superintendent or matron. It can readily be seen that a juvenile detention home could not and should not be maintained without the supervision of a superintendent or matron.

It is therefore my opinion that detention quarters may be legally and properly maintained at the county home, in charge of a superintendent or matron appointed by the judge of the juvenile court, to be paid either on a salary or a per diem basis, and it is mandatory upon

the county commissioners to provide a juvenile detention home upon the advice and recommendation of the juvenile judge.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

---

2805.

WOMEN WHO SERVED IN ARMY OR NAVY OF UNITED STATES—ENTITLED TO SOLDIERS' RELIEF—SECTION 2934, GENERAL CODE.

*SYLLABUS:*

*Women who served in the army or navy of the United States are, by the provisions of Section 2934, General Code, included in the classification of persons entitled to soldiers' relief.*

COLUMBUS, OHIO, August 8, 1938.

HON. GLENN W. MARRIOTT, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR: You recently requested my opinion on the following question:

"Can the Soldiers' Relief Commission give aid to an army nurse who served during the Spanish War or World War?"

Section 2934, General Code, which enumerates a list of those persons entitled to soldiers' relief, reads as follows:

"Each township and ward soldiers' relief committee shall receive all applications for relief under these provisions, from applicants residing in such township or ward, examine carefully into the case of each applicant and on the first Monday in May in each year make a list of all needy soldiers, sailors and marines, and of their needy parents, wives, widows and minor children, including widows of soldiers, sailors and marines who have remarried, but again have become needy widows, who reside in such township or ward, and including the soldiers, sailors and marines of the Spanish-American war, or of the World war and their wives, widows, needy