

participate in the election (which does not seem now to be a live question) the election had no effect upon the New Madison village school district.

See also the following opinions of this department upon the centralization of schools, to-wit:

- Opinions of the Attorney-General, 1915, Vol. I, p. 338.
- Opinions of the Attorney-General, 1916, Vol. I, p. 343.
- Opinions of the Attorney-General, 1916, Vol. I, p. 557.
- Opinions of the Attorney-General, 1917, Vol. I, p. 305.
- Opinions of the Attorney-General, 1917, Vol. III, p. 2047.
- Opinions of the Attorney-General, 1918, Vol. I, p. 476.
- Opinions of the Attorney-General, 1918, Vol. I, p. 723.
- Opinions of the Attorney-General, 1919, Vol. I, p. 797.
- Opinions of the Attorney-General, 1919, Vol. II, p. 1229.

You are therefore advised, in answer to your questions, that

1. Where territory has been transferred to a village school district by the county board of education, under the provisions of 4692 G. C., the electors residing in such territory are thereafter residents of the village school district and can take no part in a school election held in the rural school district from which they were transferred.

2. Where territory has been attached to a village school district by the county board of education, such territory remains a part of such village school district until proper action has been taken by the county board of education, taking such territory from the village school district.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2099.

CHILDREN'S HOME—COUNTY COMMISSIONERS AUTHORIZED TO
LEND FINANCIAL ASSISTANCE TO INCORPORATED SOCIETIES
WHOSE OBJECT IS CARE, AID AND EDUCATION OF NEGLECTED
OR DESTITUTE CHILDREN.

County commissioners are authorized under the provisions of sections 3108-1 and 14654 G. C. to lend financial assistance to incorporated societies whose object is the care, aid and education of neglected or destitute children, towards purchasing land or the erection of buildings to serve the purpose of a home for such children.

COLUMBUS, OHIO, May 24, 1921.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, in which you request the opinion of this department upon the following letter received by you from Hon. G. W. C. Perry, president, Ross County Children's Home Association:

“For the guidance and legal direction of the directors of the Ross County Children's Home Association, we beg to submit to you and through you for an opinion by the Attorney-General in relation to certain legal

questions that have arisen in the conduct of the Ross County Children's Home Association.

It will be remembered that the Ross County Children's Home Association, an incorporated society, and organized semi-public home for the care, aid and education of the neglected and destitute children, under the general laws of Ohio, sections 3108-1 and 3108-2, and which organization has been regularly certified by the board of state charities.

This organization entered into a contract with the county commissioners for the maintenance of our destitute children, for which they agreed to pay for housing, clothing and education, and for board, and to provide laundry, etc.

The amount agreed upon by the county commissioners includes rent for properties utilized for the care of said children. The legal question anticipated is whether or not this incorporated society could purchase property and the amount received from the county commissioners for rent could be used for the payment of interest on any sum of money borrowed by the society for the deferred payment of property acquired.

I am submitting this question at the request of our local prosecuting attorney and county auditor to anticipate the wants of the Ross County Children's Home Association."

A personal interview with Hon. G. W. C. Perry, president of the Ross County Children's Home Association, reveals the additional information that the society in question is desirous of providing a home for the destitute and neglected children of the county; that there is an urgent need for such a home, not only to provide for the care of the increased number of children, but in order, as well, that the society may the more economically manage the interests of the children, and provide more completely for their care and support. With such an end in view, the question is submitted to this department as to whether the society may apply a portion of the money now being paid them by the county commissioners for the purpose of providing and caring for said children, towards the payment of interest on any sum of money borrowed by the society, for the deferred payment of property acquired. In other words, the society is desirous of purchasing a home and of applying the sum of money they are at present paying as rent for the housing of said children towards the purchase price of the contemplated home.

The following is a copy of the contract between the incorporated society and the county commissioners:

"This agreement made and entered into this 19th day of July, 1920, by and between the board of commissioners of Ross county, Ohio, parties of the first part, and the Ross County Children's Home Association, party of the second part, witnesseth:

That said second party does hereby undertake and agree to maintain such dependent and orphan children as shall be legally certified to it for maintenance and in consideration whereof said first parties agree to pay second party as follows:

For housing, clothing, supervising and educating said children, the sum of \$300.00 per month; for boarding and providing laundering, the sum of \$4.00 for each week for each child so maintained.

First parties agree to pay for all medical and dental attention which said children may require.

Payment hereunder shall be made monthly upon the furnishing by second party of an itemized statement, indicating the amount due.

This agreement may be altered, amended, or changed in any particular

only by the written consent of both parties, and shall continue and be in force and effect for one year from and after the first day of August, A. D. 1920.

(Signed)

JOHN H. DAILY,
T. S. HANSON,
W. J. HAYNES,

The Board of Commissioners of Ross County, Ohio.

The Ross County Children's Home Association,
By G. W. C. PERRY, President.

Attest: MRS. A. R. WOLFE, Secretary."

Contractual relations between county commissioners and private children's home associations are contemplated and regulated by two separate and distinct statutes.

Section 3092 of the General Code provides, in part:

"In any county where such (county children's) home has not already been provided the board of county commissioners may enter into a contract for the care of its neglected or dependent children with * * * any institution or association in the state which has for one of its objects the care of dependent or neglected children, provided such institution or association has been duly certified by the board of state charities; * * *. Provided that in any such case such dependent or neglected children shall be duly committed to the aforesaid institution or association * * * by the juvenile court as provided by law."

Section 3108-1 et seq. of the General Code:

"The county commissioners of any county which has no county children's home may aid an incorporated children's home or other incorporated society, whose object is the care, aid and education of neglected or destitute children, by contributing toward the purchase of land for such home or society, of the erection of buildings by it, or of additions to existing buildings, or other improvements to an amount not to exceed twenty-five hundred dollars in any one year; or they may contribute an amount not to exceed five hundred dollars in any one year for the purpose of keeping such property in repair, provided that in case such children's home shall cease to exist so that such property so purchased shall cease to be used for the purpose of such children's home by such corporation, *such county shall have a lien upon such property so purchased for the amount of money contributed for its purchase*, and if such corporation shall fail or be unable from any cause to maintain, manage and control such home so as to subserve the purpose of a children's home from (sic) which the same was incorporated, then such commissioners may enforce such lien or, if they so prefer and desire, they are hereby authorized and empowered upon approval of the board of state charities first obtained to organize such home into a county children's home, under the general laws of the state of Ohio, and the title to such property, where the county has contributed the whole amount of the purchase money shall vest in and be the property of such county."

Section 3108-2. "Children's homes or societies *so assisted by county commissioners*, shall be known as semi-public homes. They shall have

the same rights and duties as are prescribed in the case of county children's homes by sections three thousand eighty-nine, three thousand ninety, three thousand ninety-one, three thousand ninety-three, three thousand ninety-five, three thousand ninety-six, three thousand ninety-seven, three thousand ninety-eight, three thousand ninety-nine, three thousand one hundred and three thousand one hundred and three of the General Code. They shall make to the county commissioners a monthly report on the first Monday of each month of the condition of said institution, its receipts and expenditures during the preceding month, the number of children received and discharged and the general condition of the institution.

The superintendent of the infirmary of any county shall certify children to semi-public homes in the manner provided by section two thousand five hundred and forty-seven and three thousand and ninety-one in the case of county children's homes. The county commissioners shall pay for the maintenance of such children a sum to be agreed upon by the commissioners and the board of such home. A home or society desiring to be classed as a semi-public home shall state the facts to the board of state charities, which, if satisfied that such home or society is a proper subject for county aid as provided herein, shall issue its certificate that such home or society shall be known as a semi-public home. No home or society not so certified shall be entitled to receive any funds from the county commissioners as provided herein. Said certificate shall be valid for one year from the time the same is issued."

The references in section 3108-2 are as follows:

Section 3089 provides who may be admitted to the county children's home, including the admission of children under contract arrangement.

Section 3090 regulates the method of admission to the county children's home, which may be either by the order of the juvenile court or a majority of the trustees.

Section 3091 regulates the transfer of children from the county infirmary to the children's home, and further regulates the admission of children to the home when they are found to be proper subjects for county care, which admission is through the juvenile court.

Section 3093 makes the trustees of the county children's home guardians of the children committed to their care.

Section 3095 authorizes the trustees of a county children's home to place children in foster homes.

Section 3096 regulates the contract of child placing in such cases.

Section 3097 requires county children's homes to keep uniform records.

Section 3098 requires the children's home trustees to visit placed-out children.

Section 3099 provides for the appointment of a visiting agent.

Section 3100 authorizes the trustees to place children through private agencies for that purpose approved by the board of state charities.

Section 3103 requires the reservation of the authority to cancel child placing contracts.

All this group of sections referred to in section 3108-2 relates to the powers and restrictions thereon of the trustees of public or county children's homes. It is significant that section 3092 is omitted from the catalogue of sections referred to in section 3108-2.

There is another reference in section 3108-2, namely, to section 2547. This section has, however, been repealed; in fact, it was repealed by the very act in which section 3108-2 was enacted.

It is easy to see that a semi-public home proper becomes virtually a county children's home, and its managing officers are vested with the powers of county children's home trustees. The only payment authorized to be made to such a home is that prescribed by section 3108-2, namely, "for the maintenance of such children a sum to be agreed upon by the commissioners and the board of such home." There is no authority to include any charge for housing or rent. If this is to be taken care of at public expense, the procedure outlined in section 3108-1 must be followed. In other words, sections 3108-1 and 3108-2 require a separation of the items of support and housing, and no semi-public home is entitled to charge the county anything for rent or housing. Section 3092, on the other hand, authorizes a contract between the commissioners and any institution whereby the institution shall receive for children committed to it by the juvenile court such compensation as the commissioners may agree upon with the management of the home. The compensation so agreed upon may include elements, such as rent, etc., that the commissioners may be willing to pay for and the authorities of the institution may desire to charge for.

The important thing, then, is to find out in each case whether the relations between the county and the particular institution are such as to bring the case within sections 3108-1 and 3108-2, on the one hand, or section 3092, on the other hand. It is very difficult to tell from the contract itself what the situation is. There is language in the agreement which seems to be predicated upon the Ross County Children's Home Association being a true semi-public home, as contemplated in sections 3108-1 and 3108-2, and the letter of the president of the association declares it to be such. Yet the contract goes beyond the scope of a contract for maintenance within a semi-public home, as such contract is authorized.

From the statement of facts and such inferences as have been drawn from the contract, it appears that the Ross County Children's Home Association is a semi-public home within the meaning of section 3108-2, and therefore the only compensation which the commissioners are authorized to make to such a semi-public home is for the maintenance of the children themselves—not including any item for "housing". Inasmuch as the agreed consideration of \$300.00 per month is to be paid in part for housing, the contract is to this extent invalid and should be immediately rescinded. If the society is in need of improvements on its property, the procedure under section 3108-1 should be followed for this purpose.

If section 3092 governed, any contract the parties might make within reason would be valid and the institution could use the consideration paid to it under such contract as it saw fit.

Reference may also be made to section 14654 of the appendix of the General Code, which authorizes the commissioners to aid in the purchase of land or the erection of buildings by donation, not to exceed in amount six thousand dollars.

Respectfully,

JOHN G. PRICE,
Attorney-General.