

The only question now is whether or not the reconstruction of an approach to the highway may be regarded as a part of the improvement so as to come within the terms of the statute. Section 7212, *supra*, makes such a construction a burden upon the township and it is believed is clearly a necessary incident in connection with the improvement of a township road.

By way of specific answer to your inquiry, it is my opinion that when the township trustees in improving a township road destroy the approach or driveway of an abutting property owner, the gasoline tax may properly be used to cover the cost of the reconstruction of said approach or driveway.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3283.

CHILDREN'S HOME—TRUSTEES RESPONSIBLE FOR CHILDREN'S BOARD AND LODGING UNTIL THEY REACH TWENTY-ONE YEARS OF AGE.

SYLLABUS:

The trustees of a children's home are not authorized to dismiss from the home a child which has attained the age of eighteen years, but must permit that child to remain in the home until he is twenty-one years of age, even though he has not been placed out in a permanent home, and is not able for one reason or another to provide for his own maintenance.

COLUMBUS, OHIO, June 2, 1931.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

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

“The Trustees of the children's home request me to get an opinion on this question. The law says the children's home is to be an asylum for the children until eighteen (18) years of age.

Is the home required to keep them until they are twenty-one (21)? Or can they be dismissed from the home at eighteen (18) years of age and the home be no longer responsible for their board or lodging?”

Prior to the amendment of Section 3089, General Code, in 1929 (113 O. L., 528-531) said section provided with reference to a county children's home, as follows:

“The home shall be an asylum for children under the age of eighteen years, of sound mind and not morally vicious and free from infectious or contagious diseases, who have resided in the county not less than one year, and for such other children under such age from other counties. * *”

As amended, this statute reads as follows:

“The board of trustees of the home shall receive for care and treatment children under the age of eighteen years, who have resided in the county not less than one year, and such other children under such age from other counties in the state where there is no home, as the trustees

of such home and the persons or authority having *the custody and control* of such children, by contract agreed upon, who are, in the opinion of the trustees, suitable children for *acceptance* by reason of orphanage, abandonment or neglect by parents, or inability of parents to provide for them; *provided that the juvenile court of the county may at any time commit a child to the board of trustees when in the opinion of the judge it should be so committed. The board of trustees may contract with persons, hospitals and other agencies for care and treatment of such children as need special care outside of the home, or within the home if facilities have been provided for such care and treatment. Closely supervised boarding homes shall be used for children who are not suitable for care in the children's home because of behavior, or mental or physical condition, and such children shall not be accepted under permanent surrender or by permanent commitment by the juvenile court.* If a ward of such home is found to be incorrigible or can be better cared for elsewhere, he or she may be brought before the juvenile court for further disposition. Parents or guardians of such children shall in all cases where able to do so, pay reasonable board for their children received by such children's home. *The above duties and functions shall apply to a county child welfare board established under the provisions of section 3092.*" (The words in italics were inserted by amendment in 1929.)

Section 3090, General Code, provides that children shall be admitted to a children's home by the superintendent thereof, upon order of a juvenile court or a majority of the trustees of the home. Section 3091, General Code, provides in substance, that no child or children except such as are imbeciles or idiots or are insane, shall be maintained in the "County Home" and that when children in the "County Home" are eligible for admission to the children's home, that fact shall be certified to the trustees thereof by the superintendent of the county home and the implication is evident that such children shall be transferred to the children's home. Section 3093, General Code, reads as follows:

"All wards of a county or district children's home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the permanent care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. The board of trustees may by contract or otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of (for) board, to a competent person, whenever the interests of such child require such an arrangement. Children committed for temporary care or received by arrangement with parent or guardian shall be considered under the custody and control of the trustees only during the period of such temporary care, except as hereinafter provided. Whenever a child has been received upon agreement of parent to pay a stipulated sum for his support and such parent is in arrears for a period of six months or more, the trustees may institute proceedings in the juvenile court to ascertain whether such child has been abandoned. The judge of the juvenile court shall after hearing the case make such order for the future care of the child as in his judgment is just and proper for the best interest of the child."

The trustees of a children's home are directed by force of Sections 3095 and 3096, General Code, to seek homes in private families for all children eligible to be placed out. When so placed out, a written agreement must be entered into in a form to be prescribed by the Board of State Charities to the effect that the child will be furnished with good and sufficient food, clothing and a public school education. Said Section 3096, General Code, further provides:

“* * For the purpose of securing the well-being and progress of such children, and the enforcement of the agreement, the trustees shall have the control and guardianship of such children until they become of age.”

The trustees of the home have power to consent to the adoption of children from the home. Sections 8024 and 8025, General Code.

As provided in Chapter 8, of Title 4, of the General Code of Ohio, Sections 1639 et seq., juvenile courts are empowered to commit children under eighteen years of age to a county children's home. Section 1643, General Code, provides, in part:

“When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment. * *”

The foregoing provisions of law relating to county children's homes apply as well to district children's homes. See Section 3126, General Code.

The history of legislation pertaining to children's homes discloses that when the establishment and maintenance of children's homes in the several counties of Ohio, at public expense, was first provided for by law (63 O. L., 45) the age limit for children in the homes was fixed at sixteen years. The provisions of the act above referred to were permissive, that is to say, the act merely extended permission to the county commissioners of the several counties to establish children's homes. It was provided therein that any children admitted to such homes, in accordance with the provisions of the act, might be indentured and permission might be granted for their adoption. It made no provision for the admission of any children except those resident in the county.

Prior to that time, and in counties where no children's home was established, as provided for by the act, the only method of caring for homeless and dependent children was in the several county infirmaries unless suitable private homes could be found for them. Later, power was extended to the trustees of a county children's home to receive suitable children under sixteen years of age from other counties upon agreement with the party or parties or authorities having the control and custody of such children. 64 O. L., 119.

In 1888 there was enacted Section 931b, of the Revised Statutes, in which it was provided that all children eligible for admission to a children's home then

maintained in the county infirmary of any county, or who thereafter should be received at the county infirmary, should be sent to a children's home. (85 O. L., page 48.) A similar provision was carried through later revisions of the statute and is now contained in Section 3091, General Code, which provides inter alia:

"Except such as are imbeciles, idiots or insane, no child or children entitled to admission into a children's home shall be kept or maintained in any county infirmary in this state."

In 1913, Section 3089, General Code, was amended, changing the age limit under which a children's home was to be an asylum for children, from sixteen to eighteen years. (103 O. L., 890.) During all this time Section 932, of the Revised Statutes, provided that inmates of children's homes should be under the sole and exclusive guardianship and control of the trustees during their stay in the home and until they arrived at sixteen years of age; and if such children should be placed out, indentured or adopted, "then such control shall continue until such child shall become of lawful age."

In 1911, before the age limit for admission to a children's home was raised from sixteen to eighteen years, Section 3093, General Code, which had formerly been Section 932, Revised Statutes, was amended to read as follows:

"All inmates of such home who by reason of abandonment, neglect, or dependence have been admitted, or who have been by the parent or guardian voluntarily surrendered to the trustees, shall be under the sole and exclusive guardianship and control of the trustees during their stay in such home, until they are eighteen years of age, and if such child is placed out, indentured or adopted, such control shall continue until such child becomes of lawful age." (102 O. L., 52.)

Said Section 3093, General Code, was later amended to read as it now does. It will be observed that the statute now provides that the wards of a county or district children's home which have been there committed to the permanent care of the home or which have been received by it as permanent charges, shall be under "the sole and exclusive guardianship and control of the trustees until they become of lawful age."

The words "lawful age" as used in the said Section 932, Revised Statutes, and later, in Section 3093, General Code, import something different than sixteen years or eighteen years. The expression as used in Section 3093, General Code, clearly, in my opinion, means twenty-one years of age.

It is apparent that the obligation of the trustees of a children's home, to exercise the duties of guardianship and control with respect to the inmates of the home who are permanent charges thereof, does not cease when those inmates become eighteen years of age. It is clearly apparent that children over eighteen years of age may not be admitted to the home, but when a child under eighteen years of age has been lawfully received in a children's home, a duty toward the child attaches and that duty continues until the child reaches the age of twenty-one years. The question to be determined here is what is to be done with the child after he attains the age of eighteen years and until he becomes twenty-one, if a private home is not available for him and he is unable, because of physical or mental handicaps, or otherwise, to obtain employment and provide for himself. The statutes do not give us a definite answer to this question. At no place is it provided that children may not be permitted to remain in the institution until

they become of age. On the other hand, it is not specifically provided that they may remain there.

In my opinion, the intent of the legislature may be gathered from the history of the legislation on this subject during the past few years. Prior to the last amendment of Section 3093, General Code, in 1919 (108 O. L. Part I, p. 261) this statute fixed the termination of the trustees' guardianship of the inmates of a children's home as follows:

"During their stay in the home, until they are eighteen years of age."

And if they are placed out, such control should continue until they were of lawful age. At that time, and for a long time prior thereto, Section 3089, General Code, provided that the home should be an asylum for children under eighteen years of age. The apparent intent of the law at that time was that inmates of children's homes were no longer to be maintained in the homes upon their attaining the age of eighteen. It should be remembered that at that time, girls became of lawful age at eighteen. If, upon their attaining that age, and private homes were not available for them and they could not maintain themselves, they became paupers, and necessarily, were taken to the infirmary.

Section 3093, General Code, was amended, as stated above, in 1919, to read as it now does. That is, to provide that the guardianship and control of the inmates of a children's home continued until those inmates became of lawful age, whether placed out or not, and in 1929, Section 3089, General Code, was amended. As so amended, Section 3089, General Code, does not contain the provision that the home shall be the asylum for children under eighteen years of age. It merely provides that children under eighteen years of age shall be received in the home.

Upon consideration of the terms of these statutes in the light of their history as recited above, I am convinced that it was not the intention of the legislature at the time of the recent amendments of Sections 3089 and 3093, General Code, that inmates of a children's home might not be maintained in the home after they were eighteen years of age and until they were twenty-one but must be maintained at the County Home. I am of the opinion that the very purpose of amending the statutes in the manner in which they were amended, was to permit inmates of a children's home who had been lawfully received there before they were eighteen years of age, to remain in the home under the guardianship and control of the trustees until they were twenty-one years of age, even though private homes could not be found for them and for some reason they were not able to find positions and maintain themselves.

This conclusion as to the trend of the later legislation on this subject is strengthened by the fact that in 1911, even while Section 3089, General Code, contained the provision that the children's home was an asylum for children under sixteen years of age, Section 3093, General Code, was amended, as stated above (102 O. L. 52). It will be noted that by this amendment the trustees were granted the sole and exclusive guardianship and control of the inmates of the home "during their stay in such home, until they are eighteen years of age."

This is as it should be, for the best interests of the minors in the home. For many of these children, the only parent they ever knew is the superintendent of the home. Attachments are formed that should not be broken at the age of eighteen years, which may, with less danger, be broken off at the more mature age of twenty-one. Frequently, youths at the age of seventeen, eighteen or nineteen, take jobs or positions which are later lost, for one reason or another, and it is clearly to the advantage of the child and for his best interests that during

periods between the loss or completion of one job until another one is obtained, he be permitted to return to the children's home temporarily, rather than be required to go to the County Home.

I am of the opinion, in the light of the foregoing discussion, that the trustees of a children's home are not authorized to dismiss from the home a child which has attained the age of eighteen years, but must permit that child to remain in the home until he is twenty-one years of age, where he has not been placed out in a permanent home, and is not able for one reason or another, to provide for his own maintenance.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3284.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—MEREDITH E. PAVEY, EXAMINER—CATHERINE L. KELLY, STENOGRAPHER.

COLUMBUS, OHIO, June 2, 1931.

HON. FRANK F. MCGUIRE, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, with the name of the National Surety Company of New York, appearing thereon as surety.

Said bonds are conditioned to cover the faithful performance of the duties of the principals, Meredith E. Pavey, Examiner, and Catherine L. Kelly, Stenographer, respectively.

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

Respectfully,

GILBERT BETTMAN,
Attorney General.

3285.

APPROVAL, BONDS OF VILLAGE OF NEW LEXINGTON, PERRY COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, June 2, 1931.

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

3286.

APPROVAL, BONDS OF NEW LYME TOWNSHIP RURAL SCHOOL DISTRICT, ASHTABULA COUNTY, OHIO—\$5,000.00

COLUMBUS, OHIO, June 2, 1931.

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