

may designate, such officer shall audit them, under such rules and regulations as the council prescribes, and draw his order on the treasurer of the corporation in favor of the officer presenting such bill, but the amount shall not exceed forty cents a day for any person so confined."

From the foregoing sections it is apparent that the board and maintenance of prisoners held in a city prison or station house should be paid by the marshal or chief of police of the municipality, for which expense the municipal council is authorized to provide. Since the arrest in this instance was made by a municipal officer, and the person confined in a municipal prison, the cost of his maintenance and board should be borne by the municipality.

I am, therefore, of the opinion that the expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3212.

DEPENDENT CHILD—COMMITTED BY JUVENILE COURT TO DIVISION OF CHARITIES AND THEN BY PROBATE COURT TO FEEBLE MINDED INSTITUTION—COUNTY CHARGEABLE FOR COST OF CHILD'S MAINTENANCE DURING TIME SAID DIVISION KEEPS CHILD DUE TO INCAPACITY OF SUCH INSTITUTION.

*SYLLABUS:*

1. *The probate court, under the provisions of Section 1895 of the General Code, may designate the Board of State Charities to care for a child which has been committed to the institution for the feeble-minded, when by reason of the incapacity of such institution such child can not be received.*

2. *Wherever, under authority of the provisions of Section 1895 of the General Code, a Probate Court designates the Board of State Charities to care for a child which has been committed to the Institution for the Feeble-Minded and which can not be received by reason of the incapacity of such institution, such court may properly, in its order of designation, provide that the expense of maintaining the child until its reception in the institution, shall be charged against the county.*

COLUMBUS, OHIO, May 11, 1931.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

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

"Under Sections 1352-3 et seq., the Division of Charities, Department of Public Welfare, receives dependent children through commitment by the juvenile courts. Under a juvenile court commitment to the Division of Charities, the costs of the child's care and maintenance in a boarding

or foster home is charged back against the county from which he was committed.

Frequently these children are found to be feeble-minded and in need of custodial care in a state institution for the feeble-minded. In such a case, the child is taken before the probate court of the county of its residence for adjudication as feeble-minded and commitment to a state institution. Because of the crowded conditions, these children must remain on the waiting list frequently for a period of months before they can be received at the state institution.

The commitment of a child by the probate court to the institution for feeble-minded subsequent to his commitment to the Division of Charities by the juvenile court as a dependent child brings up the question of the legal status of the juvenile court commitment. As stated above, because of the crowded conditions in state institutions, there is usually an interval between the time of the commitment of a child to the institution for feeble-minded and its admission to such institution.

In the case of a homeless dependent child, the Division of Charities has heretofore continued jurisdiction, under the previous juvenile court commitment, for care until such time as he may be admitted to the state institution. In such cases, has the Department of Public Welfare, Division of Charities, the right to incur any expense for the care of a child, pending his admission to the state institution, and to charge such expense back against the county which committed the child as a dependent to the Division of Charities?

Section 1895 provides:

'Section 1895. *Disposition of feeble-minded when board unable to provide care and custody.*—If by reason of the incapacity of the institutions for the feeble-minded to receive additional inmates, the board of administration is unable to provide for the custody and care of any feeble-minded person, said board shall forthwith notify the judge of the probate court in which the proceedings for the commitment of such feeble-minded persons are pending, of its inability to receive such feeble-minded person. The probate judge shall thereupon take such action and make such order as he may deem necessary and advisable to provide for the detention, supervision, care and maintenance of said feeble-minded person until such time as he may be received in an institution for the feeble-minded.'

Under this section, may the probate court designate the Division of Charities as the agency 'to provide for the detention, supervision, care and maintenance of said feeble-minded person until such time as he may be received in an institution for the feeble-minded,' whether or not at the time of the probate court commitment the child is a ward of the Department of Public Welfare, Division of Charities? If the probate court may so designate the Division of Charities as the agency for the temporary care of a feeble-minded child until he may be received at a state institution for the feeble-minded, in what way may the Division of Charities finance the care and maintenance of such child? Would it have the right to charge the costs back against the county from which the child was committed as is provided for by Section 1352-4?"

Section 1352-3 of the General Code, among other things, provides:

"The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. \* \* \*"

Section 1352-4, General Code, provides as follows:

"The actual traveling expenses of any dependent, neglected, crippled or delinquent child and of the agents and visitors of said board shall be paid from funds appropriated to said board, but the amount of board, if any, paid for the care of such child and the expense for providing suitable clothing and personal necessities, mental, medical, surgical, dental and optical examination and treatment, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep and for the education when necessary of a crippled child, shall be charged by the board of state charities to the county from which such child was committed or transferred as provided in sections 1352-3, 1352-5 and 1352-8. The treasurer of each county, upon the warrant of the county auditor, shall pay to the treasurer of state the amount so charged upon the presentation of a statement thereof. The sum so received by the treasurer of state shall be credited to the fund appropriated for the purpose of maintaining the child placing work of the board."

From a reading of the section last above quoted, it is clear that under an ordinary commitment to the Board of State Charities, the care of such child shall be paid by said board and charged to the county from which such child was committed or transferred. Your inquiry, however, concerns the complications which arise by reason of the commitment of a child to an institution for the feeble-minded. Without undertaking to review the many sections of the statutes relating to the care of feeble-minded persons, it may be stated that, on the whole, they disclose a distinct liberal legislative policy looking to the well being of those persons. Section 1891, General Code, provides in part, as follows:

"The department of public welfare as successor of the Ohio board of administration, hereinafter designated as the board of administration or the board, shall manage and govern the institutions for the feeble-minded and shall have the full power and authority hereafter to establish, manage, govern and maintain additional institutions for the feeble-minded whenever the necessary funds therefor have been appropriated by the general assembly and are available for such purpose. The board of administration shall have the power and authority, also, to provide for the custody, supervision, control, care, maintenance and training of feeble-minded persons committed to its custody and care, and to pay, in the manner provided by law, the expense thereof out of any funds available therefor. \* \* \*"

Section 1893, General Code, provides:

"Feeble-minded persons of any age, whether public charges or not, shall be admitted to the institutions for the feeble-minded, provided such persons are of such inoffensive habits as to make them, in the judgment of

the board of administration, proper subjects for care and discipline. Such persons shall be committed to the board of administration and admitted to the institutions for the feeble-minded in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane; and the provisions of chapter 7, division II, title V, part first of the General Code governing and regulating the admission and commitment to, and conveyance and escort to and from the state hospitals for the insane, the clothing, traveling expenses, care and maintenance of persons adjudged insane, the arrest and return of escaped insane patients, the release of insane patients from the hospitals for the insane on habeas corpus, and the record of inquests of lunacy to be made and kept by the probate judge, shall apply to and govern the commitment, custody, care, support, maintenance and release of the feeble-minded, and the same fees, costs and expenses that are allowed and paid in lunacy cases shall be allowed, taxed and paid for similar services in all proceedings related to feeble-minded persons. Provided, however, that the medical certificates mentioned in section 1957 of the General Code shall not, when the same relate to feeble-minded persons, be void after ten days, as stated in said section. When they relate to feeble-minded persons, said certificates shall be valid for an indefinite period."

Also, Section 1894, General Code, provides:

"In the reception of feeble-minded persons into the institutions for the feeble-minded, preference and priority, so far as practicable shall be given to feeble-minded children who are delinquent or dependent, as defined in sections 1644 and 1645, respectively, of the General Code. No prior or separate proceedings under the juvenile court act as provided in chapter 8, title IV, part first of the General Code shall be necessary, however, to the institution of proceedings and commitment to the board of administration for admission to the institutions for the feeble-minded, of a delinquent or dependent feeble-minded child under the age of eighteen years."

It will appear that the jurisdiction given juvenile courts over dependent and delinquent children under the provisions of Section 1642 et seq., General Code, is to some extent similar to that contained in the sections last above quoted. It may also be apropos to note that section 1683, General Code, expressly requires a liberal construction of the sections quoted, to the end that proper guardianship may be provided for the child.

Section 1815-12, General Code, which is pertinent to your inquiry, provides:

"The county from which an inmate of an institution for the feeble-minded was committed shall be liable for such inmate's support, provided the same is not paid otherwise as provided by this act (G. C. §§ 1891 to 1895 and 1815-12). The treasurer of each county shall pay to the treasurer of state, upon the warrant of the county auditor, the amount chargeable against such county for the preceding six months for all inmates therefrom not otherwise supported, upon the presentation of the statement thereof. When any person committed to an institution under the control and management of the Ohio board of administration, other than an in-

stitution for the feeble-minded, is transferred or removed, as provided by law by said board of administration from such institution to an institution for the feeble-minded, the county from which said person was committed shall be liable for the support of such person while in said institution for the feeble-minded, as hereinabove provided, and to the same extent as if such person had been originally committed from said county to said institution for the feeble-minded."

In view of the section last quoted, it could be argued that the county is liable for the support of a person committed to an institution for the feeble-minded in the absence of other sections. In other words, it can be claimed that theoretically, a person is an inmate when committed, even though he has not actually reached the institution. It has also been held that as a matter of law, one is in the penitentiary even though he is actually permitted outside the institution on parole. (*Morton v. Thomas*, 27 O. A., 486.) However, I am not inclined to the view last above mentioned. It would appear that it was the intent of the legislature in the enactment of Sections 1895 and 1815-12, supra, to provide for the charging of the support back to the county only when such persons have actually become inmates. Section 1895, supra, which you quote, expressly grants power to the probate court to make such order as he may deem necessary and advisable to provide for the supervision, care and maintenance of a person committed to an institution for the feeble-minded and who can not be received. In my opinion, a probate court may properly designate the Board of State Charities to look after such a child pending its admission to an institution for the feeble-minded, irrespective of its former status, and in view of the circumstances, it would be a commendable thing to do. Of course, such designation is pursuant to the broad authority in Section 1895 of the Code, and the arrangements made are entirely within the discretion of the Probate Judge. As a practical matter, the proper course would be for the Probate Judge to recite in the journal entry making the designation that the expense of the child's care in the meantime shall continue to be paid in accordance with the provisions of law applicable to dependent children. The acceptance of the child by the Department of Public Welfare following such an order would constitute an agreement between the department and the Probate Court justifying a continuance of the payment.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3213.

JUSTICE OF THE PEACE—FINAL JURISDICTION IN FISH AND GAME CASES—ERROR PROCEEDINGS BY STATE DENIED WHERE DEFENDANT VIOLATING GAME LAW, ERRONEOUSLY BOUND OVER TO GRAND JURY.

SYLLABUS:

1. *A justice of the peace has jurisdiction to hear, determine and enter final judgment in prosecutions charging violations of the fish and game laws and the decision of the Supreme Court of the United States in the case of Tumey vs. State, 273 U. S. 510, does not apply in such prosecutions, since a justice of the peace, by virtue of section 1452, General Code, has no financial interest in the outcome of such a trial.*