

1321.

BONDS—CITY OF AKRON, SUMMIT COUNTY, \$50,000.00.

COLUMBUS, OHIO, October 20, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of the City of Akron, Summit County,
Ohio, \$50,000. (Limited.)

The above purchase of bonds appears to be part of an issue of airport bonds of the above city dated April 1, 1928. The transcript relative to the above issue was approved by this office in an opinion rendered to your Commission under date of October 7, 1939, being Opinion No. 1277.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1322.

DEPENDENT AND NEGLECTED CHILDREN—TRANSFER—
WRITTEN AGREEMENT PRESCRIBED AND FURNISHED
BY DIVISION OF CHARITIES, DEPARTMENT OF PUBLIC
WELFARE—PUBLIC OR PRIVATE AGENCY, INSTITU-
TION OR ASSOCIATION—WHERE CHILD COMMITTED
BY JUVENILE COURT OR SURRENDERED BY PARENTS
OR GUARDIANS.

SYLLABUS:

A public or approved private agency, institution or association having as its object the care of dependent and neglected children, may transfer the custody of a child committed to its care by a juvenile court, or surrendered to it by parents or guardians, to another such public or approved private agency, institution or association under a written agreement pre-

scribed and furnished by the Division of Charities, Department of Public Welfare.

COLUMBUS, OHIO, October 20, 1939.

HON. CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion on the following question:

“May a private or public agency, institution, or association, having as its object the care of dependent and neglected children, permanently *transfer* or assign the guardianship and control of children committed to its care by the Juvenile Court, or surrendered to it by parents or guardians, to another private or public institution, association, or agency under an agreement approved by the Bureau of Charities, Department of Public Welfare?”

The Juvenile Court Code, by section 1639-30, General Code, makes provision for the procedure which a juvenile court may follow should such court find a child to be delinquent, neglected or dependent. Said section provides in part as follows:

“If the court shall find that the child is delinquent, neglected, dependent, or otherwise within the provisions of this act, it may by order duly entered proceed as follows:

* * * * * * * * *

2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare and authorized to care for children or to place them in suitable family homes; * * *.”

By virtue of the above quoted section, the several institutions and agencies therein set forth gain custody of children through order of a juvenile court. If such custody is of a permanent nature, upon commitment to those institutions or agencies, a juvenile court relinquishes jurisdiction of such children by reason of section 1639-35, General Code, which reads in part as follows:

“When a child is committed to the boys’ or girls’ industrial school, or to the Ohio state reformatory, or to the permanent care and guardianship of the state department of public welfare, or to an institution or association certified by the state department

of public welfare with permission and power to place such child in a foster home with the probability of adoption, the jurisdiction of the child so committed shall cease and terminate, at the time of commitment.”

Your inquiry is concerned in part with the transfer of children committed to one of those institutions or agencies, public or private, to another such institution or agency. The statutory provisions controlling the contemplated transfers are contained in section 1352-12, General Code, which provides in part as follows:

“The parents, parent, guardian or other person or persons having the custody of a child, may enter into an agreement with any public, semi-public or private association or institution of this state established for the purposes of aiding, caring for or placing children in homes, and which has been approved and certified by the division of charities, department of public welfare, placing such child in the temporary custody of such institution or association; or such parent, guardian or other person may make an agreement surrendering such child into the permanent custody of such association or institution, to be taken and cared for by such association or institution, or placed in a family home. Such agreements, provided for herein, shall be in writing, on forms prescribed and furnished by the division of charities, department of public welfare and may contain any and all proper and legal stipulations for proper care of the child, * * *.”

Under authority of that section, the one who has custody of a child may make provision for the care of such child by written agreement with a public or approved private agency whereby either temporary or permanent custody of such child is relinquished to such agency. We have noted above the manner in which a juvenile court may place a child who is under its jurisdiction in a public or approved private institution. Assuming a case where the court has so acted, the institution to which such child has been committed is then charged with the care and is given complete custody of such child. Having custody of the child, it would follow that such institution may avail itself of the provisions of section 1352-12, supra, and enter into a written agreement with “any public, semi-public or private institution of this state established for the purposes of aiding, caring for or placing children in homes and which has been approved and certified by the Division of Charities, Department of Public Welfare.”

In like manner it can be said that the same procedure may be followed in cases in which the child-caring agency has obtained custody of a child through surrender to it by a parent under the provisions of section 1352-12, supra.

The views expressed in the instant opinion are in accord with those contained in the Opinions of the Attorney General for 1932, Volume III, page 1507, as evidenced by the second branch of the syllabus, which reads as follows:

“The trustees of a county children’s home may make agreement on forms prescribed and published by the Division of Charities to transfer the guardianship of an indigent ward permanently committed to such institution to any public, semi-public, or private association or institution of this state established for the purpose of caring for or placing children.”

In that opinion, the then Attorney General was of the view that the trustees of a county children’s home, a public agency, might effect a transfer of a child in its custody to any public, semi-public or private institution established for the purpose of caring for or placing children. I see no reason why the converse to that rule, i. e., a private agency may effect a transfer of a child in its custody to any public, semi-public or private institution established for the purpose of caring for or placing children, would require a different conclusion.

In view of the foregoing, and in specific answer to your question, I am of the opinion that a public or approved private agency, institution or association having as its object the care of dependent and neglected children, may transfer the custody of a child committed to its care by a juvenile court, or surrendered to it by parents or guardians, to another such public or approved private agency, institution or association under a written agreement prescribed and furnished by the Division of Charities, Department of Public Welfare.

In arriving at this conclusion, I am not unmindful of section 1352-3, General Code, which provides in part as follows:

“County, district, or semi-public children’s homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or the board of administration by the juvenile court that court must first consent to such transfer.”

It has been suggested that by virtue of that section the transfers we are considering in the instant case require the consent of a juvenile court whenever the children sought to be transferred were originally committed to an institution by such court. It is my opinion that that section has no bearing on your question in view of the fact it has application only in those cases in which it is sought to effect a transfer to the Board of

Charities, the powers and duties of which are now reposed in the Department of Public Welfare under the provisions of section 154-57, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1323.

CONTRACT—STATE WITH SKELDON POWER EQUIPMENT COMPANY, CONSTRUCTION AND COMPLETION ONE 400 H. P. WATER TUBE BOILER AND STOKER, AT GIRLS' INDUSTRIAL SCHOOL, DELAWARE.

COLUMBUS, OHIO, October 21, 1939.

HON. CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, a contract by and between the State of Ohio, acting through you as Director of the Department of Public Welfare, and Skeldon Power Equipment Company of Toledo, Ohio, for the construction and completion of one 400 H. P. Water Tube Boiler and Stoker complete with brick work, as per specifications of your Department, at Girls' Industrial School, Delaware, Ohio. This contract calls for an expenditure of \$24,219.00.

You have submitted the following papers and documents in this connection: Contract encumbrance record No. 18; notice to bidders; proof of publication; division of contract; Emergency Board's release, authorizing the release of the funds set forth in G-3-1 of House Bill 674, 93rd General Assembly; estimate of cost; form of proposal containing the contract bond signed by the United States Fidelity and Guaranty Company; its power of attorney for the signer thereof and its certificate of compliance with the insurance laws of Ohio relating to surety companies; recommendation of J. B. Youngblood, Consulting Engineer of the Department of Public Welfare; tabulation of bids; Workmen's Compensation certificate, showing a compliance with the laws of Ohio relating to Workmen's Compensation.

I find you have authority by virtue of Section 1835, et seq., to enter into said contract, but I fail to find any reference to the Skeldon Power Equipment Company as being of corporate entity and I assume that the subscribing parties to the contract are partners in the said firm and have authority to enter into said contract.

Finding said contract in proper legal form, I have noted my approval