

1623.

APPROVAL, BOND OF GEORGE H. THORNE AS DEPUTY SUPERINTENDENT OF INSURANCE.

COLUMBUS, OHIO, July 22, 1924.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

Dear Sir:—

I am enclosing herewith the bond of Hon. George H. Thorne as Deputy Superintendent of Insurance, with the approval of this department as to its form.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

1624.

COUNTY CHILDREN'S HOME—AUTHORITY OF TRUSTEES UNDER SECTION 3089 G. C.—METHODS OF ADMITTING CHILDREN UNDER SECTION 3090 G. C.

**SYLLABUS:**

(a) *The trustees of a county children's home have the legal right to contract, under the provisions of section 3089 G. C., with the Department of Public Welfare, Division of Charities, for receiving and maintaining dependent and neglected children.*

(b) *Under the provisions of section 3090 G. C., there are two methods of admitting children to the county children's homes—one through the agency of the juvenile court, and the other by a majority of the trustees of the children's home.*

COLUMBUS, OHIO, July 24, 1924.

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

Dear Sir:—

Acknowledgment is hereby made of your recent communication which reads as follows:

"In the administration of the second and third parts of section 1352-6 of the General Code of Ohio as enacted in 1920, the Division of Charities of the Department of Public Welfare has created a Boarding Home Bureau. On account of the large number of boarding homes for children which must be investigated by a very limited staff, arrangements have been made, in accordance with section 1359 of the General Code, in the larger cities for some competent social organization to act as agent of the Division of Charities without cost to the state.

It is an established standard of the Boarding Home Bureau that before

a child is sent to a boarding home he shall be given an intensive physical examination not only for the benefit and protection of the child but also for the protection of the boarding family.

In one county the Division's authorized agent made a contract, dated November 7, 1922, with the trustees and superintendent of the county children's home whereby prospective boarding children would be received into the hospital department of said county children's home for the purpose of physical examination and necessary minor treatments, with the stipulation that no child should be kept for more than a ten day period. It was further agreed that the agent would pay the county children's home a specified amount per day per child for this service including the work of the home physician.

Recently the judge of the juvenile court in that county summoned the trustees and superintendent of the county children's home into court in relation to a case which involved some children who were in the county children's home in accordance with the above contract. Upon learning of the aforesaid contract, the judge vigorously objected to the entire contract, claiming first, that it is illegal for the trustees and superintendent to enter into such an agreement; second, that all admissions to the county children's home must be through the juvenile court; and, third, that the rate of \$5.00 per week for a limited service for a short time was a "giving away" of county service without full legal return, as the actual full operating expenses is somewhat higher per child than the rate specified in the contract.

Because of our administrative interest in this contract your advice is requested on the following:

1. Have the trustees and superintendent of a county children's home the legal right to make a contract as described above?
2. Must all children received in a county children's home first pass through the juvenile court for a hearing and commitment?"

The Board of State Charities, (now Department of Public Welfare, Division of Charities) is authorized to receive dependent and neglected children, for whom suitable, permanent homes in private families may be secured. Children for whom free homes cannot be secured, may be placed by said board upon its agreement to pay for their maintenance. The board may also pay for said maintenance pending the securing of proper homes. The foregoing authority is contained in section 1352-3 of the General Code. Said section provides in part:

"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. 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. \* \* \* The board shall, by its visitors, seek out suitable, permanent homes in private families for such wards \* \* \*. Children for whom on account of some physical or mental defect it is impracticable to find good, free homes may be so placed by the board upon agreement to pay reasonable board therefor. \* \* \* When necessary any children so committed or transferred to the board may be maintained by it in a suitable place until a proper home is found \* \* \*. The traveling expenses in connection with the placing of such children in homes, the amount of board, if any, and expenses for clothing and personal necessities and for mental, dental and optical examination and treat-

ment shall be paid out of funds appropriated to the use of the board by the general assembly."

It is evident that authority is granted for appointing and empowering an agent to act without compensation, as investigator, or to perform a designated duty for and in behalf of said board, by the provisions of section 1359, General Code, which section reads as follows:

"The board of state charities is hereby empowered to appoint and commission any competent agency or person, willing to do so without compensation, as a special agent, investigator or representative to perform a designated duty for and in behalf of such board. Specific credentials shall be given by such board to each person so designated, and each credential shall state the name; agency with which connection, if any; purpose of appointment; date of expiration of appointment, and such other information as such board may deem proper."

It is apparent from the foregoing sections of the General Code, that the Board of State charities not only may legally contract for the maintenance of said dependent children, but that it may do so through a competent agency designated by it. And it may also contract with the county children's home for said maintenance, as said home comes within the classification contained in section 1352-6 G. C., which reads as follows:

"For the purpose of this chapter the words 'institution' and 'association' shall include any incorporated or unincorporated organization, society, association or agency, public or private, which may receive or care for children; \* \* \*"

The question remains as to whether or not the board of trustees of the county children's home may legally contract to accept and maintain dependent children under the circumstances mentioned in your communication.

Authority is given the trustees of the county children's home to admit children who have resided in the county not less than one year, and further than that, the said trustees may contract for admitting such other children from other counties in the state where there is no home.

The foregoing authority and grant of power is contained in section 3089 G. C. Said section in designating what children may be admitted to the county children's home provides:

"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 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 agree upon, who are, in the opinion of the trustees, suitable children for admission by reason of orphanage, abandonment or neglect by parents, or inability of parents to provide for them \* \* \*"

Your second question is:

"Must all children received in a county children's home first pass through the juvenile court for a hearing and commitment?"

Section 931 of the Revised Statutes provided as follows :

“They shall be admitted by the superintendent on the order of a majority of such trustees, \* \* \* .”

Section 931 R. S. was carried into the General Code as section 3090. Section 3090 G. C. was amended in 1913, 103 O. L., page 864, and under the heading how children shall be admitted, now reads as follows :

Section 3090 :

“They shall be admitted by the superintendent on the order of the juvenile court or of a majority of such trustees, accompanied by a statement of facts signed by the court or trustees, setting forth name, age, birthplace, and present condition of the child named in such order, which statement of facts contained in the order, together with any additional facts connected with the history and condition of such children shall be, by the superintendent, recorded in a record provided for that purpose, which shall be confidential and only open for inspection at the discretion of the trustees.”

While the amended section contains the provision for admittance on the order of the juvenile court, it still contains the provision for admittance by “a majority of such trustees.”

In the opinion of this department rendered the Board of State Charities, July 29, 1916, and found in Opinions of Attorney General, Volume II, 1916, page 1296, it was held that :

“Under the provisions of section 3090 of the General Code, it will be observed that there are two methods of admitting children to the children’s homes—one through the agency of the juvenile court, and the other by a majority of the trustees of the children’s home.”

Summarizing, you are advised that, in the opinion of this department :

(a) The trustees of a county children’s home have the legal right to contract, under the provisions of section 3089 G. C., with the Department of Public Welfare, Division of Charities, for receiving and maintaining dependent and neglected children.

(b) Under the provisions of section 3090 G. C., there are two methods of admitting children to the county children’s homes—one through the agency of the juvenile court, and the other by a majority of the trustees of the children’s home.

Respectfully,

C. C. CRABBE,

*Attorney General.*