

a statute which provided that the "county commissioners may upon the certificate of the prosecuting attorney or his assistant, allow and pay an expert such compensation for his services as the court approves and the commissioners deem just and proper," were costs that the statute authorized to be paid out of the state treasury. The court in the course of its opinion, said as follows:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence. The word does not have a fixed legal signification. As originally used it meant an allowance to a party for expenses incurred in prosecuting or defending a suit. Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements. They are allowed only by authority of statute, and the word not having a fixed legal signification, it does not follow that the compensation of the expert, though an expense, is costs made in the prosecution."

The court held in this case that there was nothing in the act authorizing the expense for the expert to be taxed as costs or to be paid otherwise than by the county commissioners and therefore was not costs that the statute authorized to be paid out of the state treasury. Section 13439-3, *supra*, does not make any provision that the compensation for the services of an attorney should be taxed as costs and is similar in this respect to the statute that the court had under consideration in the case of *State ex rel. Commissioners of Franklin County vs. Gilbert, Auditor*, and therefore the ruling of the court in that case is determinative of the question presented by you.

I am therefore of the view that compensation of an attorney for services rendered under the provisions of Section 13439-3, General Code, is not costs that the statutes authorize to be paid out of the state treasury.

In specific answer to your inquiry, I am of the opinion that:

1. Compensation of a stenographer for services rendered in making the transcript of a criminal case, may lawfully be included in the cost bill and paid by the State as provided in Section 13455-8 of the General Code.
2. Compensation of an attorney for services rendered under the provisions of Section 13439-3, General Code, is not costs that the statutes authorize to be paid out of the state treasury.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1584.

ADOPTION—RIGHTS OF MOTHER UNDER TWENTY-ONE TO CONSENT TO HER CHILD'S ADOPTION OR SURRENDER IT TO AN AGENCY UNDER TERMS OF SECTIONS 1352-12 AND 1352-13, GENERAL CODE.

SYLLABUS:

*A mother who is a minor under 21 years of age may lawfully give her consent to the adoption of her child, under the provisions of Section 8025 of the General Code, and may also surrender such child under Sections 1352-12 and 1352-13, General Code.*

COLUMBUS, OHIO, March 4, 1930.

HON. HAL H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“Under the provisions of 8023 of the General Code of Ohio may a mother, who is a minor under twenty-one years of age, do the following:

(1) Consent to the adoption of her child under Section 8025 of the General Code.

(2) Surrender her child to a certified child-caring institution or agency, under Section 1352-12.

(3) Give a child under two years of age into the temporary or permanent custody of a person or agency with the consent of the Division of Charities, under Section 1352-13.

The Division of Charities, meets with questions of this kind very frequently in connection with the care of illegitimate children which are committed to it, and we shall appreciate your advice in the matter.”

Section 8023, General Code, to which you refer, provides:

“All persons of the age of twenty-one years and upward, who are under no legal disability, shall be capable of contracting respecting goods, chattels, lands, tenements, and any other matter or thing which may be the legitimate subject of a contract, and, to all intents and purposes be of full age.”

The above section, standing alone, obviously would not authorize a minor mother to make a contract excepting probably a contract which would be voidable and subject to revocation when she became of age. That is to say, the decisions under this section are generally to the effect that if an infant affirms a voidable contract after arriving at the age of majority, such ratification becomes binding. However, Section 8025, and its related sections, expressly authorize the adoption of a minor child when the consent is given in the manner mentioned therein. Said Section 8025 provides:

“In any adoption proceedings written consents must be given to such adoption as follows:

(a) By the child sought to be adopted if more than thirteen years of age.

(b) By each of the living parents or by the mother of an illegitimate child, except as follows:

(c) By the parent or person awarded the legal custody and guardianship by a juvenile court because of dependency, or because of the mental, moral or other unfitness of one or both parents; provided that such juvenile court approves of such consent whereupon the jurisdiction of such court over such child shall cease.

(d) By the parent awarded custody of child by divorce decree, provided the court which granted such decree approves of such consent, and because of such approval the jurisdiction of such court over such child shall thereupon cease.

(e) By legal guardian of the person of such child, if parents are dead or their residence has been unknown for at least one year, or if the parents have, because of mental, moral or other unfitness, been deprived of legal custody and guardianship of such child by juvenile court; but if there is no guardian and such child is not the ward of a state board or

of a certified institution or agency, a next friend shall be appointed as hereinbefore provided, to give consent.

(f) If the parent or parents having the legal custody give the custody of such child for the full term of its minority to any institution or agency established under the laws of the state to care for children and under the approval of the board of state charities, or if such institution or agency has otherwise legally acquired the custody and control of such child, the president or secretary of such institution or agency shall file a certified copy of the consent of the board of trustees, or of the proper officers authorized by such institution or agency to act in matters of adoption; and if such child is a ward of the board of state charities or other state board the secretary of such board shall file a certified copy of the consent given in accordance with its rules.

All such consents to such adoptions shall be acknowledged and witnessed."

The section last quoted, requires the consent of both parties unless the guardianship of the child, for some reason, has been taken away from them. In the event that such guardianship, for some reason, is in only one of the parents, then the consent of such parent is sufficient. In this connection, it may be noted that the history of this legislation will disclose that Section 8023, General Code, was a much earlier section than Section 8025. It may further be stated that Section 8023, General Code, is a general statute relating to contracts generally, whereas, the latter section is a special section which relates to adoption proceedings.

In the case of *In re. Bush*, 47 Kans. 264, 27 Pac. 1003, it was held that where a mother was a minor at the time of the adoption proceedings, her consent was sufficient to render the decree valid. See 1 C. J. 1386.

Section 1352-12, General Code, expressly authorizes the parents, etc., to enter into a contract with the institution therein mentioned, when placing a child in the custody of such institution either temporarily or permanently. The section places no limitation as to the status of the parents.

Section 1352-13, General Code, provides, among other things, that no child under two years of age shall be given into the custody of any person or institution which is not certified by the Division of Charities, etc., without the written consent of the Division of Charities or by a commitment of a juvenile Court. The section then provides, however, that such child may be placed temporarily, without such written consent or court commitment, with persons related by blood or marriage or in a legally licensed boarding home which is not established for the purpose of placing children in free foster homes or for legal adoption. The section last referred to, does not expressly refer to the parents giving consent to such placing of a child. However, it is believed that the other related sections imply of course that under the circumstances, the parents or other legal guardian of the child, would be authorized to consent.

It is believed that the foregoing necessarily suggests an affirmative answer to each of the three questions which you propound. While I have found no decisions in this state directly upon the points which you present, it would seem that the conclusion that I have hereinbefore reached is logical.

It is a matter of common knowledge, of which the Legislature would take notice, that it is not unusual for minors to be parents. It is therefore believed that if it had been intended that persons in such a status were to be excepted from the general provisions of the sections under consideration, authorizing parents to give consent, the Legislature would have stated said exceptions.

In specific answer to your inquiries, it is my opinion that a mother who is a

minor under twenty-one years of age may lawfully give her consent to the adoption of her child, under the provisions of Section 8025, of the General Code; and may also surrender such a child under Sections 1352-12 and 1352-13, of the General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1585.

SCHOOL TERRITORY—TRANSFER FROM EXEMPTED VILLAGE OR CITY SCHOOL DISTRICT TO ADJOINING DISTRICT—RIGHT OF COUNTY BOARD OF EDUCATION TO ANNEX ADJOINING TERRITORY—OPINION NO. 1377, 1930 MODIFIED.

SYLLABUS:

1. *Territory may be transferred from an exempted village or city school district to an adjoining county school district, upon the passage of a resolution by a majority vote of the full membership of the board of education of the district from which the territory is to be transferred, offering to surrender the territory, and its due acceptance by the board of education of the adjoining county school district to which the offer is made.*

2. *A county board of education may accept a transfer of territory from an adjoining exempted village school district, city school district or another county school district and annex the same to a school district of the county school district.*

3. *Opinion No. 1377, rendered under date of January 8, 1930, is reconsidered and modified.*

COLUMBUS, OHIO, March 4, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—Since the rendition of Opinion No. 1377, which was addressed to you under date of January 8, 1930, my attention has been directed to certain pertinent provisions of Section 4696, General Code, which were not noted and discussed in the said opinion. It has been suggested that by giving effect to the provisions of the statute to which my attention is now directed, the conclusion reached and stated in the said opinion is probably wrong.

Upon again examining the matter, I am convinced that the suggestion is meritorious and warrants a reconsideration of the questions involved.

The substantial legal question upon which the conclusions in said Opinion No. 1377 were based, is whether or not, school territory embraced within the boundaries of a city school district may be transferred lawfully to a contiguous county school district. It is held in the said opinion as stated in the syllabus thereof:

“There is no authority of law whereby territory may be transferred from a city school district.”

As stated in the former opinion, the control over the boundaries of political subdivisions in a state is vested primarily in the state legislature. It is usually delegated by the Legislature to subordinate agencies such as boards of education and municipal legislative authorities. This general principle is stated in Abbott on Public Securities, Section 28, as follows: