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CHILD—CUSTODY GIVEN TO A COUNTY DEPARTMENT OF PUBLIC WELFARE—PARENTAL AGREEMENT—CHILD DIED AFTER PLACEMENT BY DEPARTMENT IN BOARDING HOME—COUNTY MAY PROPERLY PAY COST OF BURIAL INVOLVED WHEN PARENT INDIGENT OR IMPRISONED FOR FAILURE TO PAY SUPPORT—SECTION 335.16 RC.

SYLLABUS:

Where the custody of a child has been given to a county department of public welfare by parental agreement as provided in Section 335.16, Revised Code, and where such child dies after having been placed by the department in a boarding home as authorized in such section, the county may properly pay the cost of burial involved when the parent is indigent or imprisoned for failure to pay support. Opinion No. 562, Opinions of the Attorney General for 1927, page 938, approved and followed.

Columbus, Ohio, August 9, 1955

Hon. Robert A. Fries, Prosecuting Attorney
Wood County, Bowling Green, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“On about August 1, 1953, the Wood County Department of Public Welfare assumed the care and custody of the four minor children of Mr. X. for the reason that their mother was deceased and their father, the said Mr. X., was not providing them with the necessary food, clothing, supervision, etc. He was later lodged in Wood County Jail for such failure.

“While said children were in the custody of the Welfare Department and while their father was in jail, one of them, B., became ill and died. Her body was not claimed for private burial and the county paid the burial expense. H. E., Director of Wood County Department of Welfare, has now been informed by a state examiner that the county should not have paid this expense.

“We would like your opinion as to whether or not this child, as a ward of the Welfare Department, was an ‘indigent county charge’ as set out in your 1927 Opinion No. 562 and your 1928 Opinion No. 2245, and whether the county should have paid the burial expense.”

In a subsequent letter, you have informed me of these additional facts. Following the mother's death the father gave custody of the child in question to the welfare department and signed a contract agreeing to help pay the expenses of her maintenance. The child was then placed in a boarding home by the department. The father never actually helped pay any of these expenses and he was in the county paid on a charge of non-support at the time of the child's death.

The 1927 opinion to which you refer involved a consideration of the provisions of former Section 3495, General Code, which provisions are now set out without substantive change in Section 5113.15, Revised Code. This section, placed by the commission on recodification in the chapter relating to poor relief, reads as follows :

“When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent, or charitable institution in this

state, and such body is not claimed by any person for private interment at his own expense or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:

“(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

“(B) If such person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

“(C) If such person had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county.

“Such officials shall provide, at the grave of such person, a stone or concrete marker on which his name and age, if known, and the date of his death shall be inscribed.”

The writer of the 1927 opinion, *supra*, after noting the provisions of former Section 3495, General Code, said at page 945:

“Even if it be conceded, however, that the phrase in Section 3495, *supra*, ‘and such person was not an inmate of a *penal, reformatory, benevolent or charitable* institution, in this state’ relates only to a state institution, and therefore does not include an inmate of a County Home or a County or District Tuberculosis Hospital within the exception to the operation of the statute, it is my opinion that the section in question does not relate to the inmates of County Homes, County Hospitals, District Hospitals or to other county charges.

“That there is a well settled line of demarcation between that class of indigent poor for whom it is the duty of the township or municipal corporation to care for on the one hand and those for whom it is the duty of the county to provide is well settled. This question has been before this department a number of times and was elaborately discussed in an opinion of this office rendered under date of December 16, 1920, and reported in Opinions, Attorney General, 1920, 1177. Suffice it to say it is the duty of townships and cities to furnish relief to all residents of the state, county, township or city under Sections 3477 and 3479, General Code, who need *temporary* relief and to all such residents who need *partial* relief, while it is the duty of the county to furnish

relief to persons who do not have the residence requirements prescribed by Section 3477 and 3479, supra, to persons who are permanently disabled, to paupers, and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the County Home or under county control."

(Double emphasis added.)

Since this opinion was written, the laws relating to poor relief administration have been changed in many important respects, and the "well settled line of demarcation" mentioned by the writer between those cases which are the responsibility of the townships and municipalities and those for which the county authorities are responsible is no longer so clearly evident. However, in Opinion No. 740, Opinions of the Attorney General for 1946, page 56, the distinction was redrawn recognizing the changes in the administration of poor relief. My predecessor held that burial expenses were not poor relief and that the liability for burial of an indigent person receiving poor relief, where the body was not otherwise claimed, remained with the township where such indigent person had legal residence. Further, it was held that if such person were in a county home or under "county control," it would be the responsibility of the county commissioners to provide for burial. See also Opinion No. 2245, Opinions of the Attorney General for 1928, vol. II, p. 1502; Opinion No. 4814, Opinions of the Attorney General for 1932, vol. III, p. 1387; Opinion No. 2494, Opinions of the Attorney General for 1940, vol. I, p. 652.

From the facts here presented, it is evident that the child in question was not eligible for poor relief as Section 5113.01, Revised Code, provides:

"* * * Poor relief may be given to persons living in their own homes or other suitable quarters, but not to persons living in a county home, city infirmary, jail, or tuberculosis sanatorium or to children who are not living with their parents, guardians, or other persons standing in place of parents." (Emphasis added.)

Neither was the child in this case eligible for aid to dependent children as one of the conditions imposed by Section 5107.03, Revised Code, is:

"* * * (A) Such child has been deprived of parental support or care by reason of death, continued absence from home, or physical or mental incapacity of a parent, and is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt in a place of residence maintained by one or more of such relatives as their own home; * * *"

(Emphasis added.)

In the case in question, the welfare department received custody of the child by agreement with the father, which is provided for in Section 335.16, Revised Code, which states :

“The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services : * * *

“(B) To enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the division, another department, or any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any such child, or with respect to any other matter, in the interests of such child, provided the permanent custody of a child shall not be transferred by a parent to the board or department without the consent of the juvenile court ; * * *

“(D) To provide care of all kinds which the board deems for the best interests of any child the board finds in need of public care or service; provided that such care shall be provided by the board by its own means or through other available resources, in such child’s own home, in the home of a relative, or in a certified foster home, receiving home, school, hospital, convalescent home, or other institution, public or private, within or outside the county or state ; * * *”

Thus the only aid available to this child is that received from the county and financed primarily by county taxes and appropriations as provided in Section 335.35, Revised Code.

In Opinion No. 6451, Opinions of the Attorney General for 1943, at page 563, it is said :

“Children committed to, or *placed with* a county child welfare board, bear the same relation to the welfare board as do inmates of a children’s home to such an institution, and, in a sense, are *inmates of the board*. A county children’s home is a county institution ; the inmates are wards of the county. (Emphasis added.)

In regard to boarding homes it was also said in this opinion at page 567 :

“Later, the care of children who were inmates of children’s homes because of congested conditions in the home, were placed outside the home under circumstances that did not comport entirely with the idea of the children becoming foster children, as

the term had been generally understood, and this became particularly true when the children had been originally confided to the care and custody of welfare agencies such as county welfare boards and the state board of charities and later the Department of Public Welfare, Division of Charities. These welfare agencies did not, and do not have buildings in which the children may be cared for, and it is necessary that they be placed with private individuals, or what may be termed 'boarding homes.' * * *

There should be no question of the responsibility of a county to bury inmates of a county children's home as there is no substantial basis to distinguish such inmates, in this regard, from inmates of a county home; and the 1927 opinion, *supra*, held that burial expenses of inmates of county homes and other county charges were a county liability. This ruling is one of long standing and should not be disregarded or set aside unless a proper construction of the statutory language involved makes it imperative to do so. See *Industrial Commission v. Brown*, 92 Ohio St., 309, 311.

Similarly, I do not consider it logical to make a distinction between inmates of a county children's home, actually resident therein, and the juvenile wards of the county who are being cared for under a boarding home arrangement made by the county department of welfare, for such boarding homes, as a practical matter, are often utilized by the county authorities in lieu of placement in the county children's home.

Accordingly, in specific answer to your inquiry, it is my opinion that where the custody of a child has been given to a county department of public welfare by parental agreement as provided in Section 335.16, Revised Code, and where such child dies after having been placed by the department in a boarding home as authorized in such section, the county may properly pay the cost of burial involved when the parent is indigent or imprisoned for failure to pay support. Opinion No. 562, Opinions of the Attorney General for 1927, page 938, approved and followed.

Respectfully,

C. WILLIAM O'NEILL

Attorney General