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CHILDREN'S HOME—CHILD WELFARE BOARD—TRUST
FUND—DEVISE—LEGACY—HOUSE BILL 418, 96 GENERAL
ASSEMBLY—SECTION 3070-1 G. C.—WARREN COUNTY.
SYLLABUS:

Applicability of House Bill No. 418, passed by the 96th general assembly, Section 3070-1, et seq., General Code, to Warren County, discussed.

Columbus, Ohio, January 18, 1946

Hon. Carl Abaecherli, Prosecuting Attorney
Lebanon, Ohio

Dear Sir:

This will acknowledge receipt of your letter relating to the Warren County Orphan Asylum and Children's Home and its present board of trustees, in which you submit certain questions which have arisen by reason of the recent enactment of House Bill No. 418, by the 96th General Assembly. The particular portions of the new law involved in your ques-

tions are those relating to the newly created county "Child Welfare Board", Section 3070-1, et seq.

Your letter relates to a situation peculiar to Warren county, and also is quite lengthy, and for these reasons I am not quoting it herein.

The Warren County Orphan Asylum and Children's Home is an institution of a dual character, in that it is both an orphan asylum and a county children's home. This situation was brought about by the county commissioners taking advantage of Sections 1 and 2 of an Act passed by the General Assembly on February 11, 1869, entitled "An Act to authorize county commissioners in certain cases to accept devises and legacies, and to erect and maintain an orphan asylum in connection with a children's home." 66 O. L., page 8. Sections 1 and 2 of the Act read as follows:

"Section 1. When any person has heretofore by his or her last will and testament provided for, or shall hereafter provide for the tender of his or her estate, or any part thereof, to any county of this state for the purpose of providing for the erection and endowment of an asylum where poor white children, who have lost one or both of their parents, may be educated, and if necessary be supported during their minority on the condition that said county accept said devise, subject to the trusts mentioned in said will, the principal to be kept sacred, and the net income thereof, together with a like sum to be furnished by said county, to be annually applied to the support and maintenance of such an institution, it shall be lawful for the commissioners of any county to accept the same and to proceed to carry out the said will.

Section 2. In case of the acceptance of any such trust and bequest by the commissioners of any such county, it shall be lawful for such commissioners, if they see proper to do so, to attach to such an institution to be erected and maintained out of funds and property so bequeathed and devised, and the like amount of income to be annually furnished by said county as aforesaid, a 'Children's Home,' which shall be an asylum for all other white persons resident of the county where such home is located, under sixteen years of age, who by reason of abandonment by parents, neglect or inability of parents to provide for them, or other cause, shall, in the opinion of the trustees of said institution hereinafter provided for, be deemed suitable and proper persons to be admitted thereto; and the name, birthplace and age of each person so admitted, together with the names and residence of the parents of each person, and such other statements in relation to said persons as may be deemed necessary and proper, including the time of reception and discharge, shall be recorded by the

superintendent of such institution, in a book to be provided by the county for that purpose, which book shall be open to public inspection."

At this point it may be noted that Section 2, just quoted, was amended February 4, 1885, 82 O. L., page 41, by striking out the word "white."

The Act also provides in Section 4 for the appointment of a board of trustees by the Court of Common Pleas to manage the institution, as follows:

"When the necessary site and buildings are provided by the county, it shall be the duty of the court of common pleas of such county. immediately thereafter, to appoint a board of six trustees to manage the said institution, and who shall be judicious persons, resident of said county. The two directors first named shall serve for six years, the second two for four years, and the third two for six years, and as their terms shall expire their successors shall be appointed by the court for the term of six years; and in case of removal from the county, death, resignation, removal by the court for cause, or vacancy in said office, or for any other cause, the court shall fill such vacancy at its first session thereafter; said trustees shall not receive any compensation for their services; they shall appoint a superintendent and other necessary officers of said institution, and with the concurrence of the county commissioners fix the salaries thereof; said officers to be removed at any time at the pleasure of the trustees, and if requested by them, shall give bond in such sum and with such conditions as the trustees shall prescribe; and said trustees, in the support and maintenance of said institution, shall not annually expend or contract any indebtedness more than the amount authorized to be expended by the commissioners of said county."

The Act of February 11, 1869, has never been specifically repealed, and from your letter it appears that on June 7, 1911, the Circuit Court of Warren County, in an unreported case, was of the opinion that the Act was then in full force and effect, and accordingly issued a writ of mandamus commanding the judge of the Common Pleas Court to appoint trustees in accordance with Section 4 above quoted.

I am not disposed at this time to question the correctness of the 1911 ruling of the Circuit Court, but it should be noted in this connection that there was not in existence at that time any law of such far reaching scope as House Bill No. 418, and also that both the 1869 law and the children's home laws in force in 1911, dealt with children "under sixteen years of

age”, whereas House Bill No. 418 deals with children “under twenty-one years of age.” The questions you are interested in must be determined under the laws now in force, and applicable thereto.

House Bill No. 418, according to its title and text, is a recodification of the statutes relating to children under twenty-one years of age, and the purpose of its enactment, as stated in one of its sections, to wit, Section 3070-1, is as follows:

“The purpose of sections 3070-1 to 3070-35, inclusive, is to supplement, expand, modernize and integrate child welfare services and the care and placement of children in the several counties of the state, and to this end this act shall be liberally construed.”

It is also provided in another section, to wit, Section 3070-6, as follows:

“In any county where a county children’s home exists at the time of the effective date of this act, and in which the board of trustees of said home have not transferred their powers and duties to a county department of welfare, such board of trustees shall hereafter be known as the ‘child welfare board’, and shall have all the powers and duties vested by this act in such boards. The custody of all wards of such board of trustees shall be deemed transferred to the child welfare board.”

Since your letter discloses that Warren County does not have a department of welfare to which the board of trustees of its orphan asylum and children’s home has transferred its powers and duties, it follows that the board of trustees appointed under and pursuant to the Act of February 11, 1869, has become and shall hereafter be known as the county’s “Child Welfare Board”, with all the powers and duties vested in such boards by House Bill No. 418, including the custodianship of all wards, provided, of course, said House Bill No. 418 supersedes and repeals by implication the earlier 1869 Act.

While the general rule is that repeals by implication are not favored and are to be avoided whenever possible, it seems to me that in view of the declared purpose of the enactment of House Bill No. 418, both in its title and in Section 3070-1, and the other provisions of the Bill to which I have already directed attention, and the further fact that the new law has expressly repealed, without a single exception, every section of Chapter 3 of Division IV, Title X of Part I of the General Code, which related

to orphan asylums and county children's homes, commencing with Section 3070, and has not even amended or re-enacted any of them, the earlier Act of February 11, 1869, must now give way to the new, enlarged and modernized legislation. This being the case, it is my opinion that Section 3070-6, hereinbefore quoted, relating to the "Child Welfare Board", and Section 3070-7 relating to the filling of vacancies and the appointment of new members, are applicable to the Warren County Orphan Asylum and Children's Home and its board of trustees. In this connection I quote from *Goff v. Commissioners of Morrow County*, 87 Ohio St., 142, at page 149, as follows:

"It is also a well-known rule of construction that where a statute purports to revise the whole subject-matter of a former act and thereby evidences the fact that it is intended as a substitute for the former, although it contains no express words to that effect, it operates as a repeal of the former law."

See, also, 37 O. Jur., page 421, Section 164.

I have not overlooked the fact that a trust fund is also involved in your case, and while this fund must still continue to be applied to the purpose for which it was created, it seems to me that if a board of trustees appointed under the Act of February 11, 1869, was able to execute the trust and also manage the dual institution at the same time, the new child welfare board provided for in House Bill No. 418 likewise could function equally well in that regard and may do so, particularly in view of the express provisions of Section 3070-6 that the custody of all wards of the board of trustees shall be deemed to be transferred to the child welfare board, and the further fact that the Act of 1869 contains no provision prohibiting a change in the trusteeship.

I have not attempted to answer categorically all of the questions propounded in your letter, but I have no doubt that the interpretation I have placed upon House Bill No. 418 will enable you to apply its provisions to the different questions involved in your inquiry.

Respectfully,

HUGH S. JENKINS

Attorney General