

where the agreement is a contract of purchase rather than a contract of lease, the law requires competitive bidding when the amount involved is in excess of five hundred dollars.

Respectfully,
GILBERT BETTMAN,
Attorney General.

754.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
HURON COUNTY.

COLUMBUS, OHIO, August 16, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

755.

JUVENILE COURT—JURISDICTION OVER DEPENDENT CHILDREN
FOUND IN COUNTY—RESIDENCE OF SUCH CHILDREN OR THEIR
PARENTS IMMATERIAL.

SYLLABUS:

A juvenile court has jurisdiction to declare any child to be a dependent which is found within the county under facts and circumstances which constitute dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court.

COLUMBUS, OHIO, August 17, 1929.

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

DEAR SIR:—In your recent communication you request my opinion on the following:

"1. An inmate of the Institution for Feeble-Minded was granted trial visit from the institution to a home in a county other than the county from which she was committed. During this trial visit she gave birth to an illegitimate child conceived during the period of trial visit, the father of the child presumably being a resident of the county in which the mother was living and in which the child was born. The parentage of the child, however, can not be definitely established. The mother is of age and had been absent from the institution for about three years although not discharged. The child is a dependent child, the mother being unable to support it. It is understood that although the mother is a ward of the State, this department has

no authority to accept the child for placement in a foster home or institution except upon the commitment of the child by a court of competent jurisdiction.

Which county has jurisdiction to make a commitment in this case and thereby accept responsibility for maintenance—the county from which the mother was committed to the Institution for Feeble-Minded or the county in which the child was born?

2. An inmate of the Institution for Feeble-Minded gave birth to an illegitimate child conceived at the institution. The father of the child is unknown.

What is the status of the child as a dependent child?

Does the court of the county from which the mother was committed to the institution have authority to make disposition of the child either by commitment to the Institution for Feeble-Minded, if feeble-minded, or to a child-caring agency such as the Division of Charities of this Department for placement, if a normal child?"

In an opinion of one of my predecessors, found in Opinions of the Attorney General for the year 1921, page 808, the then Attorney General had under consideration the question as to whether or not a child born under the circumstances described in your communication was to be regarded as an institutional child. The conclusion of the Attorney General in that case as disclosed by the syllabus, was :

"1. A person does not become a ward of the state unless a statute exists which provides for that status.

2. No statute exists which says that a child born to a woman who is an inmate of a state institution thereby takes the status of the mother.

3. The obligation of the county, under Section 1352-4, G. C. (109 O. L. 362), extends only to children committed to the state's care. Children received by state institutions informally and not by virtue of a statutory proceeding are not included in said section."

It is believed that the conclusion of the Attorney General is sound and it would make no material difference whether the mother of such a child was in the institution at the time of the child's birth, or whether she had been permitted to go upon a trial visit to another county without being finally discharged as an inmate of the Feeble-Minded Institution. That is, it would make no difference in so far as such child's status is concerned with reference to being under the custody and control of the institution.

You state that both of said children are dependent and inquire in effect as to what court has jurisdiction to commit such children to the proper custody.

Sections 1639 to 1683-1, inclusive of the General Code, provide the powers and jurisdiction of juvenile courts. As provided in Section 1642, such courts,

"* * * shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years not inmates of a state institution, or any institution incorporated under the laws of the state for the care and direction of delinquent, neglected and dependent children," etc.

In other of the sections above mentioned, provision is made for the punishment of those who contribute to the delinquency or dependency of a child. Section 1648, General Code, provides :

"Upon filing of the complaint, a citation shall issue, requiring such minor

to appear, and the parents or guardian or other person, if any, having custody or control of the child or with whom it may be, to appear with the minor at a time and place to be stated in the citation; or the judge may in the first instance, issue a warrant for the arrest of such minor or for any person named in the complaint and charged therein with having abused or abandoned, or charged therein with neglect of or being responsible for or having encouraged, aided or abetted the delinquency or dependency of such child, or having acted in a way tending to cause delinquency in such child. A parent, step-parent, guardian or other person not cited may be subpoenaed to appear and testify at the hearing. Any one cited or subpoenaed to appear who fails to do so, may be punished as in other cases in the Common Pleas Court for contempt of court. Whenever it shall appear from affidavit that a parent or guardian or other person having the custody of such child resides or has gone out of the state or that his or her place of residence is unknown so that such citation cannot be served on him or her, the clerk shall cause such citation to be published once in a newspaper of general circulation throughout the county, and published in the county, if there be one so published. The citation shall state the nature of the complaint, and the time and place of the hearing, which shall be held at least two weeks later than the date of the publication; and a copy of such citation shall be sent by mail to the last known address of such parent, guardian or other person having custody of such child, unless said affidavit, shows that a reasonable effort has been made without success to ascertain such address. The certificate of the clerk that such publication has been made or such citation mailed shall be sufficient evidence thereof. Until the time for the hearing arrives, the court shall make such temporary disposition of such child as it may deem best. When said period of two weeks from the time of publication shall have elapsed, said court shall have full jurisdiction to deal with such child as provided by this chapter. When a person charged with violating a provision of this chapter shall have fled from justice in this state, such judge shall have all the powers of a magistrate under the laws of this state relating to fugitives from justice."

Without quoting further from the sections relative to the jurisdiction of the Juvenile Court, it may be stated that it is clearly the intention of the law that the jurisdiction of such courts extends throughout the county and they have power to commit children which are found to be delinquent or dependent therein, to the proper custodial care. In Section 1648, supra, provision is made for the service of a citation upon the child to appear; also upon the parents or guardians who are known residents of the state or county. It is obvious that such a court would have no jurisdiction over a child residing outside of the county unless the act of dependency or delinquency took place within its jurisdiction.

In the matter of Veselich, a Minor, decided by the Court of Appeals of Cuyahoga County, 22 O. A. R. 528, it was held as disclosed by the second branch of the headnotes:

"Where complaint was filed in Juvenile Court alleging dependency of child, and where mother and reputed father were beyond state, and custody was in orphan asylum, publication of citation under Sections 1647 and 1648, General Code, held sufficient, even though affidavit that citation could not be served on them was not filed."

The purpose of the juvenile law is for the protection of children and to prevent them being in the custody of improper persons irrespective of the legal settlement or

residence of the child or its parents. It follows therefore, that when a child is found to be dependent within the jurisdiction of the court, such court may properly assume jurisdiction for commitment of such child in the manner provided by law either permanently or temporarily.

In the case of *State ex rel vs. Wead, Auditor*, 113 O. S. 692, it was held that the traveling expenses and board, if any, for the care of a dependent child, the expenses of providing suitable clothing, etc., shall be charged by the Board of State Charities to the county from which such child was committed. It was further held that the same expenses may also be charged to the county from which the child was transferred, as provided in Section 1352-3 of the Code.

Based upon the foregoing, it is my opinion that a juvenile court has jurisdiction to declare any child to be a dependent, which is found within the county under facts and circumstances which constitute dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court.

It is believed a more specific answer to your inquiry is unnecessary.

Respectfully,

GILBERT BETTMAN,
Attorney General.

756.

GENERAL APPROPRIATION BILL—APPROPRIATION OF PORTION OF
HIGHWAY CONSTRUCTION FUND FOR 1930 MAY NOT BE EX-
PENDED FOR OBLIGATIONS ARISING BEFORE JANUARY 1, 1930.

SYLLABUS:

Forty per cent of the eighty per cent of the Highway Construction Fund allotted to the counties under the provisions of Section 5541-8 of the General Code of Ohio, and appropriated by the General Assembly under the column designated "1930" may not be legally expended to cover obligations arising prior to January 1, 1930.

COLUMBUS, OHIO, August 17, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"Your official opinion is respectfully requested in connection with the use of 40% State Highway Construction Funds during the present biennium.

The 87th General Assembly of Ohio, 1927, under Section 5541-8, apportioned and distributed State Highway Construction Funds in part as follows:

'Forty percent thereof shall be appropriated for use in and shall be used in the several counties in the State in proportion to the number of motor vehicles registered from each of said counties during the calendar year preceding the making of such appropriation.'

The 88th General Assembly of Ohio, 1929, House Bill No. 510, apportioned for Additions and Betterments Highway Improvement Funds \$8,000,000 in 1929 and \$8,500,000 in 1930, making a total appropriation for the biennium of \$16,500,000. 'Any revenue in excess of the amounts above appropriated for total operation and maintenance of Highway Improvement Funds shall be