

on form prescribed and published by the Division of Charities to transfer the guardianship of an indigent ward permanently committed to such institution to any public, semi-public or private association or institution of this state established for the purposes of caring for or placing children in homes and which has been approved and certified by the Division of Charities.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4883.

JUVENILE COURT—MAY NOT ORDER PERMANENT SEPARATION OF CHILD FROM PARENTS—CHILD TEMPORARILY COMMITTED TO DIVISION OF CHARITIES SHOULD BE RETURNED TO PARENTS UPON ORDER OF COURT.

SYLLABUS:

1. *A juvenile court has no authority to make a permanent order of separation of a child from its parents, or in the case of an illegitimate child, from its mother, and follow the same with a temporary commitment to the Division of Charities.*

2. *Where a temporary commitment is made of a dependent child to the Division of Charities, such child should be kept in readiness for return to the parent or guardian upon order of the court.*

COLUMBUS, OHIO, January 9, 1933.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“For several years the Division of Charities has been asking juvenile courts for permanent separations of dependent children from parents, and children so separated have then been temporarily committed to the Division for placement. In the event that it has been possible later to place such children for adoption, the Division of Charities has then petitioned the court to change the temporary commitment to a permanent one.

Recently, some of the courts have questioned the practice of making permanent separations and then giving the Division of Charities a temporary commitment. A careful reading of Sections 1653 and 1672 fails to reveal any authority for the present practice of permanently separating a child from his family and then temporarily committing him to the care and custody of the Division of Charities and thus we are of the opinion that the courts which are raising objections to this procedure are within their rights. On the other hand, these statutes do not reveal any clause which could be interpreted as prohibiting such procedure.

The situation has reached the point where it seems necessary for the Division of Charities to have a formal Attorney General's opinion on the following question:

Can a juvenile court make a permanent order of separation of a child from his parents, or, in the case of an illegitimate child from the mother, and following such an order, can the court then make a temporary commitment to the Division of Charities or other child-caring agency authorized to accept the guardianship of dependent children?"

Your question is one concerning the power of the juvenile court and is to be determined solely by a consideration of the statutes under which that court operates. (1912 O. A. G., 926).

An examination of the laws relative to the powers of a juvenile court discloses no provision authorizing such court to make "a permanent order of separation of a child from his parents", and since the powers of such court are purely statutory, it follows that such an order may not be made by such court.

Section 1652, General Code, provides that the juvenile court may continue the hearing of a case of a delinquent child from time to time and may commit the child to the care and custody of a probation officer and may allow such child to remain in its own home, etc.

Section 1653, General Code, provides for the commitment of a delinquent or neglected child to various persons, boards, agencies and institutions, including the board of state charities.

Section 1672, General Code, relative to temporary and permanent care, provides, in part, as follows:

"If the court awards a child to the care of an institution, association, or a state board in accordance with the provisions of this and other chapters, the judge shall in the award or commitment designate whether it is for temporary or permanent care and custody. If for temporary care, the award or commitment shall not be for more than twelve months, and before the expiration of such period the court shall make other disposition of the matter or recommit the child in the same manner. *During such period of temporary care the institution, association or state board to which such child is committed, shall not place it in a permanent foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall direct.* At any time during such temporary custody the institution or board to whom such child is committed, may, whenever there is an opportunity to place such child in a foster home by adoption, request the court to determine whether such commitment should be modified to include permanent care and custody. * * *"
(Italics the writer's.)

It follows, however, from the express language italicized in the above quoted section, that when the Division of Charities receives the temporary care of dependent children, such children must be kept in readiness for return to parents or guardians whenever the court shall so direct.

Clearly, the statute contemplates that in the event of an award of a child by a juvenile court, such award shall be either permanent or temporary, and, if temporary, the institution, association or state board receiving the care of the child shall keep the child in readiness for return to the parent or guardian upon the order of the court.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that:

1. A juvenile court has no authority to make a permanent order of separation of a child from its parents, or, in the case of an illegitimate child, from its mother, and follow the same with a temporary commitment to the Division of Charities.

2. Where a temporary commitment is made of a dependent child to the Division of Charities, such child should be kept in readiness for return to the parent or guardian upon order of the court.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4884.

COUNTY TUBERCULOSIS HOSPITAL—EXPENDITURE OF PROCEEDS OF BONDS—FINANCIAL ADMINISTRATION OF CONSTRUCTION FUND—TUBERCULOSIS HOSPITAL NOT A PUBLIC UTILITY—OFFICES COMPATIBLE—CLERK OF COUNTY. COMMISSIONERS ACTING AS DEPUTY AUDITOR WITHOUT COMPENSATION.

SYLLABUS:

1. *A clerk of the board of county commissioners appointed under Section 2409, General Code, may be lawfully appointed as a deputy auditor without compensation to assist the auditor in the performance of his duties as clerk of a building commission appointed in connection with the construction of a county tuberculosis hospital, providing it is physically possible for such person to perform the duties of both positions.*

2. *The full amount of the proceeds of an issue of bonds or notes may be expended for the purpose for which such issue was authorized, notwithstanding the fact that interest maturing previous to the receipt of taxes is not capitalized as authorized by Section 2293-11, General Code.*

3. *With the exception of the item of expenses of the building commission referred to in Section 2333, General Code, the commissioners have no control of the construction fund other than as members of the building commission.*

4. *The cost of acquiring real estate in connection with the construction of a county tuberculosis hospital may be considered by the court of common pleas in computing the maximum amount of compensation which may be received by the building commissioners under Section 2334, General Code.*

5. *When bonds are authorized for the purpose of acquiring a site and constructing a building, the authorization of such bonds is deemed an appropriation of the proceeds of the same for the purpose for which such bonds were issued.*

6. *In the event of a purchase of a site from the proceeds of an issue of bonds for an amount less than allocated to such purpose, the saving thus effected may not be used for the construction of the building.*

7. *In the construction of a county tuberculosis hospital, the building commission is not limited in its expenditures for such hospital by the amount of bonds authorized for such purpose but may expend funds in excess of such amount providing the cost of the improvement is not substantially increased over and above the amount approved by the electors.*

8. *A contract with an architect for public work which provides for the architect's compensation to be computed upon a percentage basis of the cost of the improvement is not thereby invalid.*