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CHILD WELFARE BOARD:

1. PLACEMENT OF CHILD—MUST CONSIDER NEED OF PLACEMENT—ABILITY OF PARENTS TO PAY FOR COST AND CARE—INVESTIGATION—APPROVAL OF JUVENILE COURT—REQUEST OF PARENTS OR LEGAL CUSTODIAN OF CHILD.
2. STATUS, PRIVATELY OPERATED DAY CARE CENTER—PRIVATE AGENCY—COST OF CARE.

3. NEED OF CHILD FOR PUBLIC CARE OR PROTECTIVE SERVICES—BEST INTERESTS OF CHILD—BOARD MAY PROVIDE FACILITIES FOR CARE AND COLLECT FROM PARENTS AMOUNT IT DETERMINES THEY ARE ABLE TO PAY.

## SYLLABUS:

1. A child welfare board can not provide service in arranging for the placement of a child without respect to the reason for the child's need of placement or to the ability of the parents to pay for the cost of care even if after investigation the board finds that such care is for the child's best interests and such placement is approved by the juvenile court or requested by the parents or legal custodian of such child.

2. After a child welfare board has determined that a child is "in need of public care or protective services" and that day care center service in a privately operated day care center is "for the best interests" of such child, if the parents of such child are able to pay a part of the cost of care the board may pay to the private agency only the remaining portion of the cost of care.

3. After a child welfare board has determined that a child is "in need of public care or protective services" and that day care center service in a day care center operated by the board itself is "for the best interests" of such child the board may provide the facilities for such care and collect from the parents as much of the cost as it determines they are able to pay.

Columbus, Ohio, January 31, 1947

Hon. Henry J. Robison, Chief, Division of Social Administration,  
Department of Public Welfare  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Since your Opinion No. 769 was issued in March, 1946, in relation to the responsibility of the child welfare board for the day care of children, several questions have been raised which we wish to bring to your attention.

Section 3070-17 of the General Code provides in part that the Child Welfare Board shall have the following powers and duties \* \* \* (d) to provide care of all kinds which the board may deem to be in the best interests of any child whom the board may find to be in need of public care or service. Such care shall be provided by the board by its own means or through other available resources, \* \* \*.

The request made to your office which resulted in Opinion No. 769 did not bring out some of the factors which we believe are involved in the liberal construction of these sections. We would like to point out that in only ten counties of the state are private social agencies authorized to provide care for children, and that in no county is it possible for the private social agencies to offer service or facilities for the care of all children who may be in need of service. We would also like to offer some examples of the kind of cases which come to the attention of the child welfare boards for your consideration in reviewing the specific questions on which we are seeking your advice.

a. A widower who is earning enough to pay for the cost of day care for his children wishes to have them accepted in a center operated by the Child Welfare Board so that he can keep his family together. Does the fact that he is willing and able to pay for the full cost of care prevent the Child Welfare Board from giving this service if it is not otherwise available?

b. A married woman whose husband is earning enough to maintain the family is advised by her physician that her children should be placed in a day care center or a day care foster home in order that she can avoid a complete breakdown. Does the fact that the woman is not employed prevent the Child Welfare Board from providing this care and receiving from the family as much of the cost of care as they are able to pay and still maintain a standard of decency and health?

c. A child guidance clinic advises that a child should be placed in a day care center with other children to correct undesirable personality traits which are developing. The father is earning enough to maintain his family but the mother is willing to work in order that they can pay for the cost of care. Do the facts that the mother's employment is not due to economic necessity or that the family can pay for the full cost of care prevent the Child Welfare Board from providing care and receiving the cost from the family?

In the light of the actual situation as it exists in relation to the availability of services, we are requesting your answer to the following questions:

1. If after investigation, the Child Welfare Board finds that full or part-time care of any child is for his best interest, and such placement is approved by the Juvenile Court or requested by the parents or legal custodian, can the Board provide service in arranging such placement without respect to the reason for the child's need of placement or to the ability of the parents to pay for the cost of such care?

2. If facilities for care are operated by private agencies can the Board pay the cost of care directly to the operating agency and collect as much of the cost as possible from the family?

3. Where facilities for such care away from his home are not actually available to a child found by the Board to be in need of placement, can the Board provide the facilities for such care and collect from the parents all or as much of the cost as the parents are able to pay and still maintain a standard of health and decency?"

Section 3070-17, General Code, provides in part as follows:

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

(d) To provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service. \* \* \*"

It is apparent from the excerpt above that the powers and duties enumerated in Section 3070-17, General Code, and assigned by that section to the Child Welfare Board are designed for the immediate benefit of children "in need of public care or protective services." To determine who are "children in need of public care or protective services" in the absence of a statutory definition, I feel that it is pertinent to note the existence of certain fundamental conceptions with respect to the relationship of a child to the public. Basic among these is that the natural relationship of a child to society is that of child to parent. 24 O. Jur., Juvenile Courts, paragraph 6. This relationship carries with it certain rights and obligations, one of which is the duty of parents to support and maintain their minor child, a duty which is said to be a principle of natural law. 39 Am. Jur., Parent and Child, paragraph 35. Whether this obligation stems from natural right and justice, follows as a correlative or reciprocal to the parental right to the custody, control, services and earnings of minor children or rests primarily on the inability of children to care for themselves, is not as vital to this discussion as is to note the concurrence of the General Assembly of our state in the prevailing view recognizing the existence of the obligation, expressed in Section 10507-8, General Code, which reads in part as follows:

“The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education. \* \* \*.”

Simultaneously with the growth of this conception human experience devolved the necessity for a control over the parent and child relationship. Accordingly, the state commenced to exercise its superior authority as *parens patriae* and courts proceeded to “regulate and restrict, and entirely supersede, if necessary, the natural right of a parent to the exclusive custody and control of his child.” 39 Am. Jur., Parent and Child, paragraph 18. The protection of infants even from their own parents has become a well-established exercise of equity jurisdiction which dates back to the days of Blackstone who said in his Commentaries that “chancery is the supreme guardian and has the superintendent jurisdiction of all the infants in the kingdom.” 19 Am. Jur., Equity, paragraph 152. In the exercise of this power of *parens patriae* our General Assembly has established the Juvenile Court. *Bleir v. Crouse*, 13 O. App. 69 at page 74; *In the Matter of Veselich*, 22 O. App. 528 at page 533. This court, generally speaking, has special jurisdiction of a paternal nature over delinquent and neglected children. 24 O. Jur., Juvenile Courts, paragraph 2. It is empowered to deprive parents of the custody of their children and assume custody on behalf of the state not “merely to better the moral and temporal welfare of the child” but “only in instances where there is demonstrated incapacity or something akin to criminal neglect.” 24 O. Jur., Juvenile Courts, paragraph 6. It is well recognized that the parents’ right to the custody and control of their minor children may be relinquished by contract, forfeited by abandonment or lost by reason of total inability to afford minor children necessary care and support, suffering a child to become delinquent or by cruelty to the child. 30 O. Jur., Parent and Child, paragraph 10. Criminal penalties are provided for a parent who fails to support a child, but these are conditional upon the parents being able to support the child. 30 O. Jur., Parent and Child, paragraph 61.

Other laws have been enacted under which by reason of various circumstances the state has assumed the guardianship and support of children. None of these laws, however, has attempted to extend the authority and responsibility of the state with regard to the care of children beyond that point where such care is required by social and economic necessity. In other words, “public care or services” in behalf of children have been

developed not to supplant parental care and services but only to supply such care and service where it is not being provided by parents.

It is true that in the case of delinquent children the financial ability of a parent to provide for the care and support of a child is not controlling in the determination of the legal custody of the child. In such cases the economic factor must bow to the more cogent social necessities. Again, in the case of the jurisdiction of the Juvenile Court over a dependent child, the state may assume the care and support of a child whose parents are financially able to provide suitable and proper care. But this occurs only when such parents fail to meet the legal obligation of care, support and custody which they owe to their child. 24 O. Jur., Juvenile Courts, paragraph 33. Thus, for practical purposes, the economic factor is present and operative and unites with the social demands to justify the assumption by the state of parental obligation.

Your request points to my Opinion No. 769 (rendered on March 2 of last year) and refers specifically to Section 3070-17, General Code, which I considered in that opinion and found to be the basis for the authority of a Child Welfare Board to establish and maintain day care centers for children. The conclusion at which I arrived in that opinion was necessarily limited to the questions specifically enumerated in the request which gave rise to the opinion. Nevertheless, the reasoning which led me to that conclusion is applicable to a consideration of your questions which, though broader in scope, are basically similar to those which I previously considered. The key to this reasoning coincides with the conceptions set forth earlier in this opinion and is founded upon the fundamental proposition that the primary obligation to provide for the care and support of a child rests with its parents and not with government. As I pointed out in my previous opinion, only when a child is deprived of the support of his parents and has not arrived at a state of maturity which enables him to care for himself does he become an object of public charity. At that point only can a child be deemed to be "in need of public care or protective services."

No attempt is made at any point in the Child Welfare Act, Sections 3070-1 to 3070-36, General Code, to alter or amend this proposition. In fact it is evident that the General Assembly intended to adhere to this proposition, for, as I indicated in Opinion No. 769, the validity of the

exercise by a child welfare board of any of the power conferred upon it in behalf of a child is conditioned upon a finding by the board that such child is "in need of public care or protective services." In my Opinion No. 769, I defined the words "children \* \* \* in need of public care or protective services" as they appear in Section 3070-17, General Code. The third branch of the syllabus of that opinion reads in part as follows:

"\* \* \* the words 'children \* \* \* in need of public care or protective services', as they appear in Section 3070-17, General Code, mean persons under twenty-one years of age who are the objects of public charity in that their social and economic status does not enable them to be properly maintained by private resources."

The first of the "examples of the kind of cases which come to the attention of the child welfare boards" which you offer for my consideration in reviewing the specific questions on which you seek my advice, reads as follows:

"a. A widower who is earning enough to pay for the cost of day care for his children wishes to have them accepted in a center operated by the Child Welfare Board so that he can keep his family together. Does the fact that he is willing and able to pay for the full cost of care prevent the Child Welfare Board from giving this service if it is not otherwise available?"

The question you suggest with reference to the above example does not reach the factor which should control the board's determination. More important questions are: (1) Are the children of such tender years that they are in need of adult supervision during the time their father must be away from the home? (2) Is the father able either through his earnings or his savings to obtain suitable private care for his children during the hours he must be absent from home?

Suitable private care does not necessarily mean day care center care. It means no more than adequate adult supervision. The fact that the father in the above example is "willing and able to pay for the full cost of care" tends to suggest that he can afford to arrange for private adult supervision for his children which would altogether eliminate the need for the intervention of a public agency. If, however, the father must work and be away from home in order to support himself and his children and when his earnings and savings do not permit him to obtain necessary and suitable private care for his children during the hours he must be absent

from home, the children, it seems to me, are proper objects for Child Welfare Board services. The important factor is not that private day care center service is not available but that on account of the father's financial status, the need of these children for adult supervision can not be met without public assistance.

Your second example reads as follows:

“(b) A married woman whose husband is earning enough to maintain the family is advised by her physician that her children should be placed in a day care center or a day care foster home in order that she can avoid a complete breakdown. Does the fact that the woman is not employed prevent the Child Welfare Board from providing this care and receiving from the family as much of the cost of care as they are able to pay and still maintain a standard of decency and health?”

Under the facts you have set forth in this example the primary need for care seems to be that of the mother and not of the children. Whether or not the mother is employed is not the ultimate factor which would justify the board's assumption of a portion of the parental obligations owed to these children. It is at best one of many facts to be weighed and considered. If it appears upon full and complete consideration of all the factors involved in this particular case that these children are in need of care which their parents are not able to provide, then it becomes the duty of the Child Welfare Board to arrange for such care. The needs of the children and not of their mother must be the primary consideration.

The last example which you offer for my consideration reads as follows:

“(c) A child guidance clinic advised that a child should be placed in a day care center with other children to correct undesirable personality traits which are developing. The father is earning enough to maintain his family but the mother is willing to work in order that they can pay for the cost of care. Do the facts that the mother's employment is not due to economic necessity or that the family can pay for the full cost of care prevent the Child Welfare Board from providing care and receiving the cost from the family?”

In this case the child's need seems to be in the nature of hospitalization or institutional treatment. If the parents can not afford to obtain the required treatment for their child from a private agency and the



Child Welfare Board is satisfied that the child really needs such treatment, I feel that it would be proper for a Child Welfare Board to come to the aid of this child.

Turning from these examples, I come to the three questions which you present for my opinion, the first of which reads as follows:

“1. If after investigation, the Child Welfare Board finds that full or part-time care of any child is for his best interest, and such placement is approved by the Juvenile Court or requested by the parents or legal custodian, can the Board provide service in arranging such placement without respect to the reason for the child’s need of placement or to the ability of the parents to pay for the cost of such care?”

A finding by the board that “full or part-time care of any child is for his best interest” is not enough to call into operation the functions of the board. Section 3070-17, *supra*, requires that the board find a child to be “in need of public care or protective services.” What this determination requires I have already indicated. There must be a need for care arising from the financial standing and social condition of the child and its parents. This need is not established by a determination of what is for the child’s best interest. The best interest of the child is a factor to be considered only after a need of public care or protective services has been established, for if a child’s need for public care or protective services is not first established, the best interest of that child is no concern of a Child Welfare Board. A finding that full or part-time care of a child is for his best interests even when accompanied by an approval of placement by a Juvenile Court or a request for placement from the parents or other legal custodian is not a substitute for a determination by the board that the child is “in need of public care or protective services.” The reason for the child’s need of placement and the ability of the parents to pay for the cost of care are some of the social and economic factors which must be considered.

Your second and third questions, being rather closely related, will be considered together. They read as follows:

“2. If facilities for care are operated by private agencies can the Board pay the cost of care directly to the operating agency and collect as much of the cost as possible from the family?”

3. Where facilities for such care away from his home are not actually available to a child found by the Board to be in need of placement, can the Board provide the facilities for such care and collect from the parents all or as much of the cost of care as the parents are able to pay and still maintain a standard of health and decency?"

In discussing these questions I must assume that the problems they raise follow a determination by the board that a child is "in need of public care or protective services." Otherwise, as I have indicated in answering your first question, the board has no right to take any action at all.

Among the powers and duties assigned to the Child Welfare Board in Section 3070-17, General Code, is the following power contained in paragraph (d) of that section, which reads as follows:

"(d) To provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service. Such care shall be provided by the board by its own means or through other available resources, in such child's own home or 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."

Under the terms of this section it is apparent that when the board has found a child to be "in need of public care or protective services" it may proceed to consider the "best interests" of that child. That care which the board deems "to be for the best interests" of that child is to be provided by the board. The board may provide care by its own means and is by virtue of paragraph (d) of Section 3070-17, General Code, supra, empowered to avail itself of the facilities afforded by private or public agencies in carrying out its function. To obtain care for a child from a private agency, the board will undoubtedly be called upon to enter into an agreement with the agency obligating the board with respect to payment for such care. At this point it becomes necessary to note the provisions of Section 3070-20, General Code, which reads as follows:

"The board shall, before entering into any agreement, obligating the board with respect to the care of any child, determine the ability of the child, parent, guardian or other person to pay for the cost of such care, having due regard for other dependents. Such determination shall, if accepted by the parent, guardian or other person, be made a part of such agreement. If the executive

secretary has been appointed in lieu of guardian and is acting as trustee of the estate of the child, such determination shall be subject to the approval of the Probate Court."

In the event that it is determined by the board that a child, parent, guardian or other person can contribute some amount towards the cost of care and such parent, guardian, or other person accepts that determination, that person accepting the determination will become directly obligated to the private agency to pay the amount determined just as the board itself is obligated to the private agency to pay the remaining portion of the cost. It is the concern of the private agency in such a case and not of the board to collect that part of the cost which someone other than the board will pay. The board, of course, will pay its share of the cost directly to the operating agency. A refusal by the person primarily obligated to support a child to become directly obligated to a private agency for his share of the cost or his failure to fulfill an obligation assumed might give cause for Juvenile Court proceedings.

The Child Welfare Board may decide that the required care might better be given in an agency of its own. This would be a necessity where private agencies do not exist. The authority to establish and maintain a day care center will necessarily be implied from the expressly delegated power and duty "to provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be in need of public care or service."

In determining the need of public care the board may find that the parents are able to pay for a part of the cost of care although they can not afford to obtain the required care without public assistance. In such a case the need extends only to a portion of the cost of care. The board would not be privileged to extend complete care at no cost to the parents. It would necessarily be required to obtain from the parents that portion of the cost which it determines they can afford to contribute.

Accordingly, in answer to your questions, it is my opinion that :

1. A Child Welfare Board can not provide service in arranging for the placement of a child without respect to the reason for the child's need of placement or to the ability of the parents to pay for the cost of care even if after investigation the board finds that such care is for the

child's best interests and such placement is approved by the Juvenile Court or requested by the parents or legal custodian of such child.

2. After a Child Welfare Board has determined that a child is "in need of public care or protective services" and that day care center service in a privately operated day care center is "for the best interests" of such child, if the parents of such child are able to pay a part of the cost of care the board may pay to the private agency only the remaining portion of the cost of care.

3. After a Child Welfare Board has determined that a child is "in need of public care or protective services" and that day care center service in a day care center operated by the board itself is "for the best interests" of such child the board may provide the facilities for such care and collect from the parents as much of the cost as it determines they are able to pay.

Respectfully,

HUGH S. JENKINS,  
Attorney General.