

OPINION NO. 89-095

Syllabus:

The Department of Youth Services may not assume financial responsibility for the medical and hospital care of an infant born to a female child committed to the Department of Youth Services.

To: Geno Natalucci-Persichetti, Director, Department of Youth Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 20, 1989

I have before me your request for my opinion concerning the duty of the Department of Youth Services (DYS) to pay the medical expenses and hospital care of an infant born to a female child committed to DYS.

Pursuant to R.C. 5139.04(B), DYS is required to "[r]eceive custody of all children committed to it under Chapter 2151. of the Revised Code." A child who has been adjudged delinquent may be committed to the legal custody of DYS. R.C. 2151.355. "Commit" means "to vest custody as ordered by the court." R.C. 2151.011(B)(14); *see also* R.C. 5139.01(A)(1) ("'[c]ommitment' means the transfer of the physical custody of a child or youth from the court to the department of youth services"); R.C. 5139.01(A)(2) ("'[p]ermanent commitment' means a commitment which vests legal custody of a child in the department of youth services"). "Legal custody" includes the right to have physical care and control of the child, to determine where and with whom the child shall live, and the *duty to provide* the child with food, shelter, education and *medical care*. R.C. 2151.011(B)(10). When vested with legal custody pursuant to a permanent commitment of the child, DYS has "the right to have physical possession of the child; the right and duty to train, protect, and control him; the *responsibility to provide* him with food, clothing, shelter, education, and *medical care*; and the right to determine where and with whom he shall live...." R.C. 5139.01(A)(3). (Emphasis added).

Responsibility for medical care, therefore, attaches upon assumption of legal custody by DYS. With the powers and authority over a child committed to it, DYS consequently assumes the accompanying responsibilities, in this case, "responsibility for payment of medical bills incurred by a youth in the custody of the department." *Northern Columbiana County Community Hospital Association v. Department of Youth Services*, 38 Ohio St. 3d 102, 104, 526 N.E.2d 802, 804 (1988); *cf. Cuyahoga County Hospital v. City of Cleveland*, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Cuyahoga County 1984); *University Hospitals of Cleveland v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971); 1989 Op. Att'y Gen. No. 89-017.¹

The question now becomes whether DYS is also required to assume the responsibility for and expense of medical care of an infant born to a child committed to DYS. As an agency of the state created by statute, DYS has only those powers

¹ While DYS is financially responsible for the medical treatment of a child committed to it, the parents of a child may be required to pay for the expenses of orthopedic, medical or surgical treatment for, or special care of, the child. R.C. 2151.36; Ohio R. Juv. P. 34(C); 1962 Op. Att'y Gen. No. 2938, p. 274. Prior to commitment, a juvenile court may order the child's parents to reimburse the court for the cost of emergency medical or surgical treatment of the child. R.C. 2151.33(A).

statutorily granted or necessarily implied therefrom. *See Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975). An implied power is found only where it reasonably relates to the execution of an express power. *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981). Specifically concerning the power to expend public funds, it is well settled that a public agency may not expend public funds unless by clear authority of law. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918); 1988 Op. Att'y Gen. No. 88-088.

DYS does not possess the power to assert custody over the infant, inasmuch as R.C. 5139.05(A) limits the class of children subject to commitment to the department to those twelve years and older. R.C. 5139.05(A) ("[t]he juvenile court may commit any child to the department of youth services permanently as authorized in section 2151.355 of the Revised Code, provided that any child so committed shall be at least twelve years of age at the time of his commitment"). An infant born to a child committed to DYS is, therefore, not within the custody of DYS. *See generally* 1981 Op. Att'y Gen. No. 81-105 (infant born to an inmate of a penal institution is not in the custody of the Department of Rehabilitation and Corrections); 1949 Op. Att'y Gen. No. 1005, p. 632 (state owes no duty *per se* to child born to inmate of state institution); 1921 Op. Att'y Gen. No. 2404, p. 808 (child born to inmate of state institution does not take status of the mother). A person does not become a ward of the state unless a statute so provides. 1921 Op. No. 2404 at 808. No statute makes an infant born to a child committed to DYS the responsibility of or a ward of DYS or the state. Since DYS has not been granted jurisdiction over infants by any Ohio statute, DYS has neither express nor implied authority to assume responsibility for the medical care of such infants and DYS may not expend funds for such care.²

Although DYS has no duty to provide or pay for medical and hospital care for an infant born to a child committed to the custody of DYS, it does have an obligation to provide access to medical care for such an infant. *See generally* Op. No. 81-105, at 2-402. When an infant is born in a secure facility, DYS is under an obligation to bring the infant's condition to the attention of the appropriate medical authorities. *See* Op. No. 81-105 at 2-402. Consent to the necessary medical care and the consequent financial liability, however, are the province of the parent of the infant. *See Children's Hospital of Akron v. Johnson*, 68 Ohio App. 2d 17, 426 N.E.2d 515 (Summit County 1980) (duty of parent to provide for minor child includes medical treatment); 1941 Op. Att'y Gen. No. 4561, p. 988 (a prisoner retains all rights not taken away by statute, including the right to give informed consent to medical treatment to his or her child).³

Based on the foregoing discussion it is, therefore, my opinion that the Department of Youth Services may not assume financial responsibility for the medical and hospital care of an infant born to a female child committed to the Department of Youth Services.

² The question originally posed by your inquiry asked that I ascertain what public entity, if any, is financially responsible for the medical and hospital care of an infant born to a female child committed to DYS. I am constrained from rendering my opinion on that subject, as I may only advise DYS on the extent of the Department's duties. *See* 1988 Op. Att'y Gen. No. 88-008. For opinions which have addressed the issue as originally posed, see 1949 Op. Att'y Gen. No. 1005, p. 632; 1921 Op. Att'y Gen. No. 2404, p. 808; R.C. 2151.353.

³ While medical care of an infant is generally the responsibility of a parent of an infant, Ohio law is not settled on the issue of whether a minor parent may consent to and contract for medical care for an infant. I have found no Ohio statute or court decision that has directly addressed this issue. Inasmuch as this opinion is limited to the role of DYS, I need not address the issue of a minor parent's ability to consent to medical treatment.