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1. DETENTION HOME—COUNTY COMMISSIONERS NOT EMPOWERED BY SECTION 1639-22 G. C. TO ACQUIRE DETENTION HOME UPON REQUEST BY JUDGE OF COURT EXERCISING POWER AND JURISDICTION CONFERRED BY CH. 8, TITLE IV, GENERAL CODE.
2. JUDGE LIMITED TO ADVISING AND RECOMMENDING NEED OF DETENTION HOME AND EXTENT OF FACILITIES REQUIRED TO FULFILL NEED.
3. ADVICE AND RECOMMENDATION OF JUDGE PREREQUISITE TO EXERCISE OF MANDATORY DUTY IMPOSED UPON COUNTY COMMISSIONERS TO PROVIDE DETENTION HOME.

SYLLABUS:

1. County commissioners are not empowered by Section 1639-22, General Code, to acquire a detention home upon a request by the judge of the court exercising the power and jurisdiction conferred by Chapter 8, Title IV of the General Code of Ohio.

2. A judge of the court exercising the powers and jurisdiction conferred by Chapter 8, Title IV of the General Code of Ohio is limited to advising and recommending the need of a detention home and the extent of the facilities required to fulfill that need.

3. The advice and recommendation recited in syllabus 2 is a prerequisite to the exercise of the mandatory duty imposed upon the county commissioners to provide a detention home by Section 1639-22 of the General Code.

Columbus, Ohio, November 21, 1949

Hon. Harold Lutz, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In Richland County there is no regularly established detention home. Facilities furnished by the Salvation Army and private homes have been used in the past and the Probate Court has requested the County Commissioners that a detention home be furnished which they are willing to do but they believe that such a home is an agency of the Probate Court and as an agency under the direct control of the Probate Court should be recommended

to them so that they may purchase, lease or otherwise provide such detention home.

"G. C. 1639-22, the second paragraph reads as follows:

"Upon the advice and recommendation of the judge of the court exercising the powers and jurisdiction conferred in this chapter, the county commissioners shall provide, by purchase or lease or otherwise, a place to be known as a detention home within a convenient distance of the court, not used for the confinement of adult persons charged with criminal offenses * * *'

"The third paragraph of such section reads:

'In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron and other necessary employees for such home in the same manner as is provided for the appointment of other employees of the court * * *.'

"Under the above facts this office requests your opinion as to whether it is the duty of the County Commissioners or the Probate Judge to initiate the procedure necessary to the selection of a Juvenile Detention Home."

Section 1639-22, General Code, partially quoted in your letter, is contained in Chapter 8, Title IV of the General Code of Ohio. The powers and jurisdiction conferred by said chapter are reposed in the several courts of the State by Section 1639-7, General Code, which reads in part as follows:

"The juvenile court, or court of common pleas, division of domestic relations of any county, separately and independently created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter. Except in counties in which there now is, or may hereafter be created, a separate and independent juvenile court or court of domestic relations, there is hereby established and created within the probate court, a juvenile court, presided over by the probate judge, which shall be a court of record, and which shall exercise such powers and jurisdiction. The judge of such court shall receive such compensation as may be provided by law."

Since there has been no separate and independent juvenile or domestic relations court established or created in Richland County the Probate Judge of said county exercises the powers and jurisdiction conferred in said chapter of the General Code.

You have stated in your letter that the probate court has *requested* the county commissioners to provide a detention home without explaining the form or context of that communication. The word "request" is defined by Webster's New International Dictionary, Second Edition, as:

"Act or an instance of asking for something or some action desired; expression of desire; entreaty; petition; as, a request for aid."

In contrast to the meaning conveyed by the word "request" the word "advice" is defined in the same volume as:

"View or consideration of a thing; hence: a Opinion; judgment. b Prudence; consideration; wisdom; knowledge. c Determination; resolve; plan."

And the word "recommend" is therein defined as:

"To commend, or bring forward explicitly, as meriting consideration, acceptance, adoption, election or the like; to present as one's advice; one's choice or as having one's approval or support; to offer or suggest with favoring representations; as, to recommend a newcomer to one's friends, a defendant to the mercy of the court, the appointment of Brown to the postmastership."

It is presumed that the legislature was cognizant of the meaning of the words "advice" and "recommendation" when it used them in enacting Section 1639-22 of the General Code and had in mind an intent to require action, on the part of the judge of the court exercising the powers and jurisdiction conferred in said chapter of the General Code, other than that which would be necessary in effecting a request by such judge.

Section 1639-22, General Code, as presently in force was enacted in an amendatory act which became effective on the first day of January, 1946. Prior to its amendment the second paragraph of said section contained substantially identical language to that portion of the second paragraph of the present section which you have quoted in your letter. This section of the General Code was discussed and considered in an opinion appearing in Opinions of the Attorney General for the year 1938, number 2803. The syllabus of that opinion reads as follows:

"If the judge of the Juvenile Court advises and recommends the establishment of a detention home, it is mandatory upon the county commissioners to purchase or lease a detention home within a convenient distance of the court, not used for the confinement of adult persons charged with criminal offenses and

which can be furnished and carried on as far as possible, as a family home, and, the court is authorized to commit a delinquent child to such detention home in the same manner as it is in the case of commitment to any other suitable public institution."

In the body of the opinion, at page 1521, the following language will be found:

"It is clear from the provisions of Section 1639-22, supra, that the judge of the court is limited to advising and recommending the need of a detention home, and that although after being advised as to the need of such a home, a mandatory duty devolves upon the county commissioners to purchase or lease the same, with the exceptions that the detention home must be within a convenient distance from the court, not used for the confinement of adult persons charged with criminal offenses, and be furnished and carried on as far as possible, as a family home, it is wholly within the discretion of the county commissioners to determine the kind of building for such a home."

The reasoning used and the conclusions reached in that opinion would directly apply to the question which you have presented.

I think the language of the section is plain in setting forth the procedure required to establish a detention home. The commissioners would be without the power to acquire such a home, pursuant to said section, without first being advised as to the need and desirability of such home by the judge exercising the powers and jurisdiction conferred by the chapter, together with whatever recommendations he may wish to make with regard to the extent of the facilities required to fulfill that need. Upon receipt of this advice and recommendation it then becomes the mandatory duty of the commissioners to acquire a home which would meet, as near as reasonably possible, the requirements recommended by the judge. It is further reasonably clear that the choice of location, building and method of acquisition is solely within the discretion of the commissioners subject to the limitation that the location be within a convenient distance of the court and that the property acquired reasonably conforms to the advice and recommendation of the judge with respect to the need and extent of the facilities needed to fulfill the purposes for which it is to be used.

In conclusion, you are advised that it is my opinion that:

1. County commissioners are not empowered by Section 1639-22, General Code, to acquire a detention home upon a request by the judge of

the court exercising the power and jurisdiction conferred by Chapter 8, Title IV of the General Code of Ohio.

2. A judge of the court exercising the powers and jurisdiction conferred by Chapter 8, Title IV of the General Code of Ohio is limited to advising and recommending the need of a detention home and the extent of the facilities required to fulfill that need.

3. The advice and recommendation recited in syllabus 2 is a prerequisite to the exercise of the mandatory duty imposed upon the county commissioners to provide a detention home by Section 1639-22 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.