

1005

1. ILLEGITIMATE CHILD—BORN TO INMATE OF STATE MENTAL INSTITUTION—STATE HAS NO DUTY AS TO ITS CARE.
2. IF CHILD COMMITTED TO CARE OF DIVISION OF SOCIAL ADMINISTRATION BY JUVENILE COURT, COUNTY OF CHILD'S LEGAL RESIDENCE MUST REIMBURSE STATE FOR INVOLVED EXPENSES—SECTION 1352-4 G.C.

SYLLABUS:

1. An illegitimate child born to an inmate of a state mental institution has no duty as to its care owed to it by the state of Ohio.
2. If such an illegitimate child is committed to the care of the Division of Social Administration by a juvenile court, the county of the child's legal residence must reimburse the state of Ohio for the expenses involved in accordance with Section 1352-4, General Code.

Columbus, Ohio, September 22, 1949

Hon. J. H. Lamneck, Director of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We would like to have your opinion on the following:

"In the past several years, during the time that five women were on a trial visit from our state mental institutions, they became pregnant and subsequently each gave birth to an illegitimate child. Each of the children appear to be normal and are not proper wards for any of our state institutions. Only one has been committed to the state by the Juvenile Court, and the County from which the commitment was made is reimbursing the state for the care of this child.

"In each case, the mother had a legal residence in the County from which she was committed at the time of the commitment.

"In the absence of a commitment from a Juvenile Court, does the State have any duty to perform in the care of these children; and, if a commitment is made and the care of the child is accepted by the State, must the County reimburse the State for the expense involved in caring for such child?"

I can find no authority that says the State of Ohio has any duty whatsoever to an illegitimate child of an inmate of a state institution.

In Opinion No. 2404, Opinions of the Attorney General for 1921, at page 808, the first two branches of the syllabus read as follows:

"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."

Although the statutes have been amended since the above opinion was rendered, there has been no such change that would affect the conclusion reached. Therefore, I am of the opinion that the State of Ohio owes no duty to an illegitimate child born to an inmate of a state mental institution.

I assume from your question that the mother's legal residence is still in the county from which she was committed. In 5 O. Jur. Section 32 at page 578, it states in part as follows:

"A mother is the natural guardian of her bastard child
* * *"

Section 1639-6, General Code, reads as follows:

"For the purposes of this chapter, a child shall have the same residence or legal settlement as its parents, legal guardian of its person, or its custodian who stands in the relation of loco-parentis, except as otherwise provided for by statute."

Thus, I believe the illegitimate child has the same legal residence as the mother.

Section 1352-3, General Code, reads in part as follows:

"The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. * * *"

The Department of Public Welfare, by virtue of Section 154-57, General Code, succeeds to the powers and duties of the board of administration and board of state charities.

Information received from your office discloses that one such illegitimate child was committed to the care of the Division of Social

Administration of the Department of Public Welfare. Section 1352-4, General Code, reads in part as follows:

“* * * but the amount of board, if any, paid for the care of such child and the expense for providing suitable clothing and personal necessities, mental, medical, surgical, dental and optical examination and treatment shall be charged by the division of social administration to the county from which such child was committed or transferred as provided in sections 1352-3, 1352-5, and 1352-8. The treasurer of each county, upon the warrant of the county auditor, shall pay to the treasurer of state the amount so charged upon the presentation of a statement thereof. The sum so received by the treasurer of state shall be credited to the fund appropriated for the purpose of maintaining the child placing work of the division.”

Also, see Opinion No. 2404, Opinions of the Attorney General for 1921, at page 808. It can be seen that this statute requires the county from which the child was committed to reimburse the State of Ohio for certain expenses in regard to the child's care.

In conclusion, therefore, it is my opinion that an illegitimate child born to an inmate of a state mental institution has no duty of care owed to it by the State of Ohio. I further believe that if such a child is committed to the State of Ohio by the juvenile court, the county of the child's legal residence must reimburse the State of Ohio for the expenses involved in accordance with Section 1352-4, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.