

Village School District was merged into the Cincinnati School District and the Cheviot Village School District was thereby abolished, the law relating to the merger of private corporations being applicable to the merger of public corporations.

However, inasmuch as Section 4681, *supra*, provides that the territory of a village, exclusive of any territory that may be detached therefrom for school purposes, shall constitute a village school district if it has a total tax valuation of \$500,000 or more, when territory was annexed to the Village of Cheviot, a village school district was thereby created by operation of law, consisting of the newly annexed territory, provided the annexed territory had a tax valuation of \$500,000 or more.

It appears from your statement that all the territory embraced within what was formerly Bridgetown Rural School District was annexed to the Village of Cheviot. You do not state whether the annexed portion included any other territory than that embraced in Bridgetown Rural School District. In either event, if the entire territory annexed had a total tax valuation of \$500,000 or more, the annexed territory became and constituted the Cheviot Village School District which automatically came into existence by reason of the annexation. If this annexed territory included all the territory embraced within the Bridgetown Rural School District, the Bridgetown School District was thereby abolished and it thereupon became the Cheviot Village School District.

If the entire territory annexed to the Village of Cheviot had a tax valuation of less than \$500,000, the status of the annexed territory in its relation to school districts remained the same as before annexation and would so remain until such annexed territory attained a tax valuation of \$500,000 or more.

Specifically answering your question in the light of the foregoing remarks, it is my opinion that the territory recently annexed to the Village of Cheviot did not, by reason of such annexation, become a part of the Cincinnati City School District: If the property within the annexed territory had a tax valuation of less than \$500,000, its status as it relates to school districts continued to be the same after annexation as before: If said territory had a tax valuation of \$500,000 or more, it became and constituted the Cheviot Village School District.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2250.

PENSION—WOMAN WHO LEGALLY ADOPTS A CHILD NOT ELIGIBLE
TO MOTHER'S PENSION.

SYLLABUS:

Opinion No. 1016, dated June 29, 1914, and reported in the Annual Report of the Attorney General for 1914, Vol. I, p. 885, approved and followed in Opinion No. 1000, dated February 10, 1920, Opinions, Attorney General, 1920, Vol. I, p. 181, holding that a woman, who legally adopts a child is not as to such child a "mother" within the meaning of Sections 1683-2 and 1683-3, General Code, providing for mothers' pensions, even though the facts are such that the other requirements of these sections of the General Code are met, not overruled.

COLUMBUS, OHIO, June 18, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“Your opinion is requested on the question following :

Does a woman, who legally adopts a child or children, come within the definition of a ‘mother’ under the purview of Sections 1683-2 and 1683-3 of the General Code, entitling her to a pension as provided for therein, provided that the other requirements of these sections exist?”

Sections 1683-2 and 1683-3, General Code, referred to in your communication, read as follows :

Sec. 1683-2. “For the support of women whose husbands are dead, or become permanently disabled by reason of physical or mental infirmity, or whose husbands are prisoners or whose husbands have deserted, and such desertion has continued for a period of three years, when such women are poor, and are the mothers of children not entitled to receive age and schooling certificate, and such mothers and children have a legal residence in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows : Not to exceed thirty-five dollars a month when she has but one child not entitled to an age and schooling certificate, and if she has more than one child not entitled to an age and schooling certificate, it shall not exceed thirty-five dollars a month for the first child and ten dollars a month for each of the other children not entitled to an age and schooling certificate. The order making such allowance shall not be effective for a longer period than six months, but upon the expiration of such period, said court, may, from time to time, extend such allowance for a period of six months or less.

Such homes shall be visited from time to time by a probation officer, the agent of an associated charities organization, or of a humane society as the court may direct, or in the absence of such probation officer, society or organization in any county, the sheriff of said county shall make such visits as directed by the probate court; provided that the person, other than the sheriff, who actually makes such visits, shall be thoroughly trained in charitable relief work, and the report or reports of such visiting agent shall be considered by the court in making such order for relief.”

Sec. 1683-3. “Such allowance may be made by the juvenile court, only upon the following conditions : First, the child or children for whose benefit the allowance is made must be living with the mother of such child or children; second, the allowance shall be made only when in the absence of such allowance, the mother would be required to work regularly away from her home and children, and when by means of such allowance she will be able to remain at home with her children, except that she may be absent for work for such time as the court deems advisable; third, the mother must in the judgment of the juvenile court be a proper person, morally, physically and mentally for the bringing up of her children; fourth, such allowance shall in the judgment of the court be necessary to save the child or children from neglect and to avoid the breaking up of the home of such woman; fifth, it must appear to be for the benefit of the child to remain with such mother; sixth, a careful preliminary examination of the home of such mother must first have been made under the direction of the court by the probation officer, the agent of an associated charities organization or humane society, or in the absence of such probation officer, society, or organization in any county, the sheriff of such county shall make such investiga-

tions as the court may direct, and a written report of the result of such examination or investigation shall be filed with the juvenile court, for the guidance of the court in making or withholding such allowance."

Notwithstanding the language of Section 1683-2, *supra*, to the effect that for "*the support of women*" coming within the classes enumerated in the section, "*the juvenile court may make an allowance to each of such women,*" I think it plain from the provisions of the entire act providing for mothers' pensions, especially Sections 1683-3, 1683-4 and 1683-6, General Code, that such pensions were intended to be for the benefit and to promote the welfare of minor children and that the act should be liberally construed to accomplish the purpose intended. Were the question here presented a new one, I would, for these reasons, be inclined to hold that an adopting mother is a mother within the terms of the sections under consideration. I find, however, that the question has heretofore been passed upon by this department, *viz.*, in an opinion, rendered under date of June 29, 1914, and reported in the Annual Report of the Attorney General for 1914, Vol. I, p. 885, which opinion was expressly approved and followed in Opinion No. 1000, rendered under date of February 10, 1920, and reported in Opinions, Attorney General, 1920, Vol. I, p. 181. In the opinion of 1914, it was held as follows:

"An adopting mother is not entitled to a pension, since the term 'mother' cannot be construed as extending to an 'adopting mother.'"

In this opinion it is said:

"Answering your sixth question, I am of the opinion that an adopted mother, other conditions being met, is not entitled to the pension. While the act is to be given a liberal interpretation to accomplish the result at which it is aimed, yet, to my mind, the word 'mother' as repeatedly used therein, does not have, naturally, the significance of the term 'adopted mother'; and, in my judgment, such a meaning is too artificial to be given to the former term, even under sanction of a liberal interpretation."

The syllabus of the opinion of February 10, 1920, reads as follows:

"A foster-mother is not a mother within the meaning of Section 1683-2 of the General Code relating to mothers' pensions."

In the opinion it was said:

"In 1914 Annual Report of the Attorney General, Vol I, page 885, in an opinion dated June 29, 1914, it was held that neither an 'adopted mother' nor a 'grandmother' who is keeping and supporting a grandchild whose parents are dead, is a mother within the meaning of the statute above mentioned. The statute was subsequently amended (106 O. L. 436), but in a respect which does not require a modification of the opinion referred to in so far as the question under consideration is concerned.

In the opinion at page 887, the former Attorney General said:"

The Attorney General then quoted the excerpt from the opinion of 1914, above set forth, and continued:

"Under the doctrine of the foregoing opinion, you are advised that a foster-mother is not a mother within the meaning of Section 1683-2, G. C."

I am advised that the opinion of 1914, above quoted in part has been followed by all subsequent Attorneys General, and has been generally adhered to by probate judges throughout the state. In view of these facts and the fact that, since the date of the rendition of this opinion of June 29, 1914, the Legislature has not seen fit to amend the sections here involved, I feel constrained to adhere to the opinions of my predecessors in office.

Specifically answering your question, therefore, it is my opinion that a woman, who legally adopts a child is not as to such child a "mother" within the meaning of Sections 1683-2 and 1693-3, General Code, providing for mothers' pensions, even though the facts are such that the other requirements of these sections of the General Code are met.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2251.

TAX AND TAXATION—AUDITOR OF STATE MAY PAY ASSESSMENTS AGAINST LEASED SCHOOL LANDS FOR ROAD IMPROVEMENT OUT OF RENTALS TO EXTENT OF BENEFIT BY IMPROVEMENTS—CONSTITUTIONALITY OF SECTION 5330, GENERAL CODE, QUESTIONED.

SYLLABUS:

Although by reason of the trust relation under which the State of Ohio holds title to Section 16, School Lands, arising by reason of the compact between the United States and the State with respect to such lands, grave doubt exists as to the constitutionality of the provisions of Section 5330, General Code, permitting the assessment of such lands for public improvements when the same are held on short time leases and providing for the payment of such assessments out of the rentals of such lands, the Auditor of State, as State Supervisor of school and ministerial lands, until the same is declared unconstitutional by a court of competent jurisdiction, is warranted in assuming the validity of said statutory provisions and in paying out of the rentals of said lands assessments against the same to the extent that they are benefited by the improvements for which the assessments are levied.

COLUMBUS, OHIO, June 18, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, which reads as follows:

"I enclose herewith resolutions adopted by the Boards of Education of Marion Township, Hardin County, Ohio, interested in the proceeds of 640-acre tract of agricultural lands comprising Section 16, school lands in said township, requesting that a sufficient amount of rentals of said Section 16 be applied on meeting the cost of a contemplated road improvement extending along the south side of said tract one mile.

Question: Can such rentals be used in paying road assessment improvements as contemplated in said resolutions? If not, we would assume that a