

5164.

APPROVAL—BONDS OF PLAINFIELD RURAL NO. 7, SCHOOL DISTRICT, HAMILTON COUNTY, OHIO, \$4,500.00.

COLUMBUS, OHIO, February 15, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5165.

APPROVAL—BONDS OF VILLAGE OF BURTON, GEAUGA COUNTY, OHIO, \$1,650.00.

COLUMBUS, OHIO, February 15, 1936.

Industrial Commission of Ohio, Columbus, Ohio.

5166.

CRIPPLED CHILDREN—LEGISLATURE MAY ACCEPT FEDERAL AID FOR CRIPPLED CHILDREN.

SYLLABUS:

1. *The present laws of Ohio authorize the furnishing of aid to crippled children through "a state agency," namely, the Department of Public Welfare of the State of Ohio.*

2. *Although such agency under the present law is unauthorized to accept federal aid to accomplish the purpose of aiding crippled children in Ohio, the General Assembly may by legislative act accept such federal aid.*

COLUMBUS, OHIO, February 15, 1936.

MRS. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM:

DEAR MADAM: I am in receipt of a communication from the Superintendent of Charities in your department, which reads as follows:

"The Division of Charities, Department of Public Welfare, at present administers the crippled children's law in Ohio. Under

the Social Security Act the Division may receive Federal money on a matching basis. These funds are available as of February 1st, and since Ohio spent last year over \$300,000 in this service, and it is estimated that Ohio's share under the Security Act will be over \$90,000, we are anxious to take advantage of these funds.

In case the State Legislature does not enact laws enabling us to accept this fund, will you please give us an informal opinion as to whether the Division could accept these funds without such laws. In other words,

Do the present laws of Ohio authorize the furnishing of aid to crippled children through any state agency and, if so, is such agency, under present law, authorized to accept Federal aid to accomplish such purpose?

We would greatly appreciate a reply from you."

Section 1352-8, General Code, provides :

"In order to provide suitable medical and surgical treatment, and education when necessary, of crippled children whose parents or guardians fail or are financially unable to provide such treatment, *the board of state charities* is authorized and empowered to receive into its custody such children. Application for such care, treatment, and education, shall first be made to the juvenile court by a parent, guardian or some interested person. If such court is of the opinion that such child is in need of treatment and education, and finds that the parent or guardian fails to provide it, he may make an order to that end; or if the parent or guardian is financially unable to pay all or a part of the expense of such treatment, the court shall make a proper finding and decree. In either case the court shall at once forward a copy of the decree and a statement of facts to *the board of state charities*, and such board shall, when able to do so under this act, accept such child for care as hereinbefore provided. Upon receipt of notice from such board that such child can be given suitable treatment the court shall then commit such child to such board and provide for its conveyance in charge of a suitable person to the place designated by such board for treatment. The expenses for conveyance shall be paid by the county or by the parent or guardian as the court may direct. Such commitment shall be temporary and shall be only for the period necessary for the treatment of such child." (Italics mine.)

Section 1352-9, General Code, reads as follows:

“The board of state charities shall arrange for the treatment and education of crippled children committed to it by the juvenile court. The expenses for board, clothing and personal necessities and for mental, medical, surgical, dental, and optical examination and treatment, including massaging and other beneficial treatment and braces, artificial limbs and accessories and their upkeep, and for education when necessary, shall be paid out of funds appropriated to the use of the board of state charities by the general assembly; but the board of state charities may require parents or guardians to pay the state for such expenses when in its judgment such action is just. Such board shall exercise close supervision over such crippled children while patients in such hospitals and may at any time terminate any contracts so made when in its judgment such action should be taken. Each child shall be visited as frequently as necessary and proper by a representative of such board who shall prepare and present to the board a written report concerning the progress of such patient.” (Italics the writer’s.)

Section 1352-10, General Code, reads as follows:

“Whenever it appears that a crippled child has been successfully treated, or that it cannot be further benefited by such treatment, the board shall order its discharge and thereupon its guardianship and responsibility shall cease. After such a child has been in the care of the board of state charities in accordance with this act for more than one year the parent or guardian, with the approval of the juvenile court, may cause its release from the supervision of the board of state charities.” (Italics the writer’s.)

Section 154-26, General Code, provides in part:

“The following offices, boards, commissions, arms and agencies of the state government heretofore created by law are hereby abolished:

* * *	* * *	* * *
The board of state charities.		
* * *	* * *	* * *

Section 154-57, General Code, provides inter alia :

“The department of public welfare shall have all powers and perform all duties vested in or imposed upon the Ohio board of administration and the fiscal supervisor-secretary thereof, excepting * * * and said department of public welfare shall also have all powers and perform all duties vested in or imposed upon *the board of state charities* * * *. Wherever powers are conferred or duties imposed by law upon the boards and officers mentioned in this section such powers and duties, excepting as aforesaid, shall be construed as vested in the department of public welfare. * * *” (Italics the writer’s.)

From the mere reading of the foregoing statutes, it appears, in answer to your first question, that the laws of Ohio authorize the furnishing of aid to crippled children through a “state agency”, namely, the Department of Public Welfare of the State of Ohio, the Division of Charities being a division of that department.

With reference to your second question as to whether or not the Department of Public Welfare or the Division of Charities in that department is authorized to accept federal aid to accomplish the purpose of providing aid to crippled children in Ohio, it may be said that as a general rule the right of the state itself to acquire and hold property is as full and complete as that of an individual. In 36 Cyc. at page 869 the following is said upon this point :

“A state has in general the same rights and powers in respect to property as an individual. It may acquire property, real or personal, by conveyance, will or otherwise, and hold or dispose of the same or apply it to any purpose, public or private, as it sees fit. The power of the state in respect to its property rights is vested in the Legislature, and the Legislature alone can exercise the power necessary for the enjoyment and protection of those rights, by the enactment of statutes for that purpose.”

Further on this point, Section 18 of the General Code provides as follows :

“*The state*, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, a council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under

the control of the state, the board of directors, trustees or other officers thereof, may receive *by gift*, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes." (Italics the writer's.)

There is no provision in the above section for the Department of Public Welfare or the Division of Charities in that department receiving Federal money as a "gift" for the purpose of aiding crippled children, except in so far as "the state" is authorized to receive gifts of such a nature. Moreover, by virtue of Title IV, Part 2 of the Social Security Act (Public—No. 271—74th Congress) (H. R. 7260), it is provided in Section 511:

"* * * The sums made available under this section shall be used for making payment to *States* which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services." (Italics the writer's.)

It is also provided in Section 512:

"(a) Out of the sums appropriated to section 511 for each fiscal year the Secretary of Labor shall allot *to each State* \$20,000, and the remainder to the States according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in section 511 and the cost of furnishing such services to them.

(b) The amount of any allotment *to a State* under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to *such State* under section 514 until the end of the second succeeding fiscal year. No payment *to a State* under section 514 shall be made out of its allotment for any fiscal year until the allotment for the preceding fiscal year has been exhausted or has ceased to be available." (Italics the writer's.)

Although it appears that under the provisions of Section 18 of the General Code, the State of Ohio is authorized to receive federal aid for

the purpose of aiding crippled children within the state before the money donated to the state can pass to and become vested in the state, it must in some manner accept the same. If by statutory provision some officer or board is designated with authority to accept property on behalf of the state for any purpose, the acceptance of the property by such officer or board for such purpose, will be effective to vest title to such property in the state. State, ex rel. Turner, Attorney General, 93 O. S. 379. In the absence of statutory provision authorizing some designated officer or board to accept property for and on behalf of the state, there is no way in which such property can be accepted otherwise than by an act of the Legislature.

In construing Section 18, quoted supra, with reference to the state receiving "gifts" of land for highway purposes, it was held in an opinion of my predecessor to be found in the Opinions of the Attorney General for 1928, Volume II, page 1210, as disclosed by the first paragraph of the syllabus:

"Under Section 18 of the General Code, as well as independent of its provisions, the State of Ohio may receive a donation of land as right of way for a public road, whether said right of way so donated is mere land or is already improved as a road by the donor. Before the proprietary right and title to said land donated can pass to and vest in the State for said purpose, the State must in some manner accept the same. In the absence of statutory provision designating some officer or board with authority to accept said property on behalf of the State for road purposes, the only way such acceptance can be effected is by an act of the Legislature. Unless otherwise provided by law at the time of such acceptance by the State the road thus established will be subject to the classification of public roads provided for by Section 7464, General Code."

It was also held in an opinion of my immediate predecessor in office to be found in the Opinions of the Attorney General for 1930, Volume I, page 204, as disclosed by the second branch of the syllabus:

"2. Under the provisions of Section 18, General Code, as well as independent thereof, the state as a sovereign has authority to receive title to property given to it; but unless some officer or agent of the state has been designated to accept the real property on behalf of the state, such property can be accepted only by act of the Legislature."

Inasmuch as I am unable to find any statutory officer or agent of the state designated to accept federal money on behalf of the state for the purpose of aiding crippled children, it appears that such money should be accepted by act of the Legislature.

Moreover, even if the federal government saw fit to allot funds to the Department of Public Welfare of the State of Ohio or the Division of Charities therein, by virtue of Section 24 of the General Code of Ohio, such funds would have to be deposited in the State Treasury and it would then be necessary for the General Assembly to appropriate such funds to the Division of Charities within the Department of Public Welfare, before they could be used for the purpose of aiding crippled children in Ohio.

However, in specific answer to your inquiry, it is my opinion that:

1. The present laws of Ohio authorize the furnishing of aid to crippled children through "a state agency", namely, the Department of Public Welfare of the State of Ohio.

2. Although such agency under the present law is unauthorized to accept federal aid to accomplish the purpose of aiding crippled children in Ohio, the General Assembly may by legislative act accept such federal aid.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5167.

BOARD OF HEALTH—MANDATORY ON BOARD OF HEALTH
TO CONDUCT HEALTH EXAMINATIONS IN SCHOOLS
WHERE THEY HAVE NOT APPOINTED SCHOOL PHY-
SICIAN.

SYLLABUS:

1. *Where the board of education of a school district has not employed a school physician, it is the mandatory duty of the board of health for the health district in which the school district is located to conduct health examinations of all school children in said district and to report the findings of such examination and to make such recommendations to the parents or guardians as are deemed necessary for the correction of such defects as may need correction, as provided by Section 7721-2 of the General Code of Ohio.*

2. *Where a statute is amended and the former corresponding statute expressly repealed at the same time, such provisions of the original statute*