

was repealed by the Griswold act and that boards of education are without authority since January 1, 1922, to issue deficiency bonds under said House Bill No. 254.

Since it appears from the transcript that the resolution of the board of education authorizing the issuance of the bonds under consideration was not adopted until February 16, 1922, it follows that there was no authority in law for the issuance of said bonds at that time and I advise the Industrial Commission not to purchase the same.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2996.

JUVENILE COURT—WHERE IT COMMITS DEPENDENT OR DELINQUENT CHILD TO DEPARTMENT OF PUBLIC WELFARE—DIRECTOR OF SAID DEPARTMENT MAY ASSIGN AND TRANSFER SUCH CHILD FROM ONE DIVISION TO ANOTHER IN SAID DEPARTMENT—CONSENT OF JUVENILE COURT NOT NECESSARY.

1. *Where the juvenile court commits a dependent or delinquent child to the care and custody of the department of public welfare, and said department assigns said child to the bureau of juvenile research for the purpose of mental or physical examination, the director of public welfare may then assign and transfer such child from said bureau of juvenile research to the division in the department of public welfare known as the division of charities, and no consent on the part of said division of charities, as such, is necessary to such assignment or transfer.*

2. *Likewise held that the consent of the juvenile court to such assignment or transfer is also unnecessary.*

COLUMBUS, OHIO, April 15, 1922.

DR. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You recently wrote this department a letter in which you say:

“A difference of opinion seems to have arisen concerning the transfer of children provided for in sections 1352-3 and 1352-5 so far as such transfers relate to sections 1841-3 and 1841-4, and we therefore seek your opinion concerning such ‘transfers’ and ‘assignments.’”

You enclose with your letter copies of some correspondence relative to the matter. It appears from this data that the situation you have in mind is this: A child is adjudged a delinquent or a dependent under the provisions of the Juvenile Act. The juvenile court commits said child to the care and custody of the department of public welfare as the legal successor of the Ohio board of administration. Said department of public welfare then assigns the child to the bureau of juvenile research for the purpose of mental and physical examination. The bureau of juvenile research examines the child and recommends that it be placed in a private home.

The question now is whether the director of public welfare has the power to assign and transfer such child from the bureau of juvenile research to the division of charities, without the consent of the juvenile court which made the commitment and also the consent of the division of charities.

In answering the question thus framed, it is believed we will at the same time answer the specific queries contained in your letter.

The bureau of juvenile research was provided for by H. B. 214, 103 O. L. 175, enacting sections 1841-1 G. C. to 1841-7 G. C., inclusive.

Section 1841-1 G. C. says:

"All minors who in the judgment of the juvenile court require state institutional care and guardianship shall be wards of the state, and shall be committed to the care and custody of 'The Ohio board of administration,' which board thereupon becomes vested with the sole and exclusive guardianship of such minors."

Section 1841-3 G. C. says:

"The 'The Ohio board of administration' may assign the children committed to its guardianship to the 'bureau of juvenile research' for the purpose of mental, physical and other examination, inquiry or treatment for such period of time as such board may deem necessary. Such board may cause any minor in its custody to be removed thereto for observation and a complete report of every such observation shall be made in writing and shall include a record of observation, treatment, medical history, and a recommendation for future treatment, custody and maintenance. *The 'The Ohio board of administration' or its duly authorized representatives shall then assign the child to a suitable state institution or place it in a family under such rules and regulations as may be adopted.*"

The other sections to which your letter refers are sections 1352-3 G. C. and section 1352-5 G. C.

Section 1352-3 G. C., so far as material here, says:

"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. County, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the *board of administration* may, *with the consent of the board*, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court, *that court must first consent to such transfer.*"

Section 1352-5 G. C. says:

"The board of state charities may when willing to do so, receive as its wards with all the powers given it by section 1352-3 of the General Code delinquent children committed to it by a juvenile court or from any institution to which such children may be committed by the juvenile court or assigned by the board of administration. Such children shall be placed by it in homes in accordance with the provisions of section 1352-3 of the General Code. Before making such commitment the court may make an order that the parent or parents of such child shall pay the board of state charities, periodically, reasonable sums for the maintenance of such child, which orders, upon the disobedience thereof, may be enforced by attachment as for contempt. If originally committed to such institution by the juvenile court, the court must first consent to the transfer of such child to the board of

state charities. Said court may in such cases make an order that the parents or guardians pay for its maintenance in the same manner as if such child had been originally committed to said board.

Provided that if the board of state charities find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the court, institution or board of administration from which it was received."

As you are aware, the Ohio board of administration and the board of state charities no longer exist. Under the provisions of the new administrative code, both of these agencies are abolished (section 154-26 G. C.), the powers and duties of the board of administration (except those relating to the purchase of supplies for state institutions under section 1849 G. C.) being vested in the department of public welfare, said last mentioned department also succeeding to all the powers and duties vested in the board of state charities.

While the Ohio board of administration and the board of state charities are no longer in existence, it does not follow that sections 1352-3 G. C. and 1352-5 G. C. are inoperative. On the contrary, section 154-24 G. C., as well as section 154-57 G. C., makes it plain that the powers and duties contained in sections 1352-3 G. C. and 1352-5 G. C. still survive, but are to be exercised by another agency.

The effect of the administrative code is to require the words "department of public welfare" to be read wherever in a given existing statute the words "the Ohio board of administration" or "board of state charities" occur.

Section 1352-3 G. C. must therefore be read as though it said:

"The *department of public welfare* 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. County, district or semi-public children's homes or any institution entitled to receive children from the juvenile court or the *department of public welfare*, may with the consent of the *department of public welfare*, transfer to it (the department of public welfare) the guardianship of minor wards of such institution or *department of public welfare*. If such children have been committed to such institution or the *department of public welfare* by the juvenile court that court must first consent to such transfer. The *department of public welfare* shall thereupon *ipso facto* become vested with the sole and exclusive guardianship of such child or children. The *department of public welfare* shall, by its visitors, seek out suitable, permanent homes in private families for such wards * * *"

Section 1352-5 G. C. must also be read as if it said:

"The *department of public welfare* may when willing to do so, receive as its wards with all the powers given it by section 1352-3 of the General Code delinquent children committed to it by a juvenile court or from any institution to which such children may be committed by the juvenile court or assigned by the *department of public welfare*. Such children shall be placed by it in homes in accordance with the provisions of section 1352-3 of the General Code. Before making such commitment the court may make an order that the parent or parents of such child shall pay the *department of public welfare*, periodically, reasonable sums for the maintenance of such child, which orders, upon the disobedience thereof, may be enforced by attachment as for contempt. If originally committed to such institution by the juvenile court, the court must first consent to the transfer of such child

to the *department of public welfare*. Said court may in such cases make an order that the parents or guardians pay for its maintenance in the same manner as if such child had been originally committed to said department.

Provided that if the *department of public welfare* find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the court, institution or *department of public welfare* from which it was received."

It must be admitted that the substitution in the two last quoted sections of the phrase "department of public welfare" for the two phrases "board of state charities" and "board of administration," causes said sections to read somewhat awkwardly. For example, the second sentence of section 1352-3 G. C. is made to read:

"* * * the department of public welfare may, with the consent of the department of public welfare, transfer to the department of public welfare the guardianship of minor wards of * * * the department of public welfare."

Again, the first sentence of section 1352-5 G. C. is made to read:

"The department of public welfare may, when willing to do so, receive as its wards * * * delinquent children * * * assigned by the department of public welfare."

And the last sentence of section 1352-5 G. C. is made to read:

"Provided that if the department of public welfare find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the * * * department of public welfare * * *."

However, it does not appear that the substitution just referred to will in any way interfere with the administration of the duties prescribed by said sections.

It is apparent from reading the correspondence accompanying your letter that those who hold to the view that the division of charities must first consent before a child can be assigned or transferred from the bureau of juvenile research, are assuming that the division of charities is the legal successor of the board of state charities, and therefore that wherever a statute says the consent of the board of state charities is necessary, the result is the consent of the division of charities must now be obtained.

Such an assumption is erroneous. As above pointed out, the legal successor of the board of state charities is not the division of charities, but the department of public welfare. The division of charities is simply an administrative agency in the department of public welfare and established for the doing of particular work therein. Such work is not necessarily the same as that done by the board of state charities, but is whatever the director of the department of public welfare may require. In this connection note that part of section 154-8 G. C. which says:

"* * * With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions * * *."

The relation of the director of the department of public welfare to that department is indicated by section 154-3 G. C., which says:

"* * * The department of public welfare, *which shall be administered by the director of public welfare*, hereby created. The director of each

department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

It is therefore the view of this department that where the juvenile court commits a dependent or delinquent child to the care and custody of the department of public welfare, and said department assigns said child to the bureau of juvenile research for the purpose of mental or physical examination, the director of public welfare may then assign and transfer such child from said bureau of juvenile research to the division in the department of public welfare known as the division of charities, and no consent on the part of said division of charities, as such, is necessary to such assignment or transfer.

It is likewise the view of this department that the consent of the juvenile court to such assignment or transfer is also unnecessary. In such case the original commitment by the court is to the department of public welfare, and, as explained above, the transfer from the bureau of juvenile research to the division of charities is in reality a transfer *within the department of public welfare*. The child in such a case goes from one agency to another in the same department, just as it might go from one room to another in the same house. In other words, when the court at the time of the original commitment consented to the care and custody of a child by the department of public welfare, further consent is unnecessary so long as said child is cared for by some division or agency in that department.

Under the provisions of sections 1643 G. C. and 1672 G. C. (108 O. L. Part I, p. 260), the commitment of a child to the care of "an institution, association or state board" may be for either temporary or for permanent care. If for temporary care only, the institution, association or state board shall not place the child in a *permanent* foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct. In other words, the consent of the committing court is necessary to the *permanent* placement of a child in a foster home. This statement is, however, in entire harmony with the statement that the juvenile court's consent to the assignment or transfer of a child from the bureau of juvenile research in the department of public welfare to the division of charities in the same department, is unnecessary.

In the last part of your letter you ask:

"Is the law as now constituted such that both dependent and delinquent children may be placed with the division of charities whose visitors in turn must put them in family homes? If so, should there be a distinction made as to the acceptance of dependent children and the acceptance of delinquent children? And if so how can the division of charities maintain proper standards of child welfare?"

Since both dependent children and delinquent children may be committed to the department of public welfare, it is clear that said department may handle the matter of their care and custody through the agency therein known as the division of charities. Your question whether there should be a distinction made between the acceptance of dependent children and the acceptance of delinquent children seems to be a question of departmental policy or administration rather than of law, and it therefore does not seem advisable for this department to express any views thereon. This observation also applies to that part of your query which says, "And if so, how can the division of charities maintain proper standards of child welfare?"

Respectfully,
JOHN G. PRICE,
Attorney-General.