

missioners, the assessment may be made against "the *real estate* within one-half mile of either side of the improvement or against the *real estate* within one mile of either side of the improvement." Section 1214-1, enacted in 108 O. L. 478 (504) also employs the expression "against the real estate situated within one and one-half miles of either side of such improvement."

The statutes in point make no exemption of "property" or "real estate" merely because it happens to lie within the limits of a municipal corporation. The real test is not the location of the real estate, but whether it is within the assessment zone and benefited by the improvement.

Judicial authority exactly in point, in principle, is found in the case of *Commissioners of Putnam County vs. Young*, 36 O. S., 288, a case dealing with statutes authorizing road improvement on the plan of assessing benefited lots and lands within two miles of the contemplated improvement. The third syllabus in that case reads as follows:

"3. The 'lots and lands' to be assessed to defray the expense of the improvement of a public road authorized by said commissioners include lots within the limits of a municipal corporation, where the same are within two miles of the improvement, and are benefited thereby."

In the course of the opinion the court say at page 295:

"The statute requires the viewers and engineer to report for assessment all lots and lands lying within two miles of the contemplated improvement, which, in their judgment, will be benefited thereby, and which ought to be assessed therefor; the said distance to be computed in any direction from either side, end or terminus of said road. An owner of a village lot is as much a land owner as the owner of a farm; and in some circumstances such lot may be quite as much benefited by a road improvement as a parcel consisting of many acres. Such lots, being embraced within the words of the statute, are to be held within its meaning unless, from a consideration of all its parts, a contrary intention appears."

Respectfully,
JOHN G. PRICE,
Attorney-General.

2915.

JUVENILE COURT—SECTION 1653 G. C. AUTHORIZES COMMITMENTS OF DEPENDENT AND NEGLECTED CHILDREN TO CARE OF INDIVIDUALS—NO PROVISION FOR PAYMENT BY COUNTY OF BOARD OF SUCH COMMITTED CHILDREN—SECTION 3092 G. C. CONFERS NO AUTHORITY ON COUNTY TO PAY BOARD OF NEGLECTED AND DEPENDENT CHILDREN COMMITTED BY JUVENILE COURT TO INDIVIDUALS IN COUNTIES WHERE COUNTY CHILDREN'S HOME PROVIDED.

1. *Section 1653 G. C. while authorizing commitments by the juvenile court of dependent and neglected children to the care of suitable private individuals of good*

moral character, makes no provision in such cases for payment by the county commissioners of the board of such committed children.

2. *Section 3092 G. C. as amended in 109 O. L. p. 533, confers no authority upon county commissioners to pay the board of neglected and dependent children committed by the juvenile court to the care of private families or individuals in counties where a county children's home is provided.*

COLUMBUS, OHIO, March 9, 1922.

Department of Public Welfare, Division of Charities, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“The matter of the legality of a juvenile court boarding children in private families when there is a county children's home within the county has come up recently and we should like to have a definite ruling in the matter. For convenience we shall list our inquiries as follows:

1. Is it legal for the county commissioners to pay the board of children who become wards of the juvenile court and whom the court wishes to board in private families, in counties where a county children's home exists *without committing the children to the Division of Charities?* In other words, may a court ask the county to pay bills for board of children when he feels that such children should be boarded rather than sent to the children's home?

2. If the trustees of a county children's home refuse to board children in private families as section 3093 G. C. provides they may do when such care seems desirable, what alternative has a juvenile court *when he believes certain children should be boarded* other than to commit them to the Division of Charities?

3. Does the latter part of section 3092 G. C. permit the county commissioners to pay board for children if the court prefers to place them in private boarding homes where there is a children's home within the county?”

Section 1653 G. C. is thought to be pertinent to your first question and is quoted herewith:

“When a minor under the age of eighteen years, or any ward of the court under this chapter, is found to be dependent or neglected, the judge may make an order committing such child to the care of the children's home if there be one in the county where such court is held, if not, to such a home in another county, if willing to receive such child, for which the county commissioners of the county in which it has a settlement, shall pay reasonable board; or he may commit such child to the board of state charities or to some suitable state or county institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or an industrial school, as provided by law, or to the care of some association willing to receive it, which embraces within its objects the purposes of caring for or obtaining homes for dependent neglected or delinquent children or any of them, and which has been approved by the board of state charities as provided by law. When the health or condition of the child

shall require it, the judge may cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive it for like purposes without charge. The court may make an examination regarding the income of the parents or guardian of a minor committed as provided by this section and may then order that such parent or guardian pay the institution or board to which the minor has been committed reasonable board for such minor, which order, if disobeyed, may be enforced by attachment as for contempt."

It may be observed that the section quoted provides for eight distinct or optional forms of commitment by the juvenile court of neglected and dependent minors or wards of the court, and which briefly may be summarized as follows: The court may commit such children:

1. To the care of the children's home, if there be one in the county.
2. If there is no such home in the county, to a similar home in another county.
3. To the Board of State Charities.
4. To the care of some suitable state or county institution.
5. To the care of some reputable citizen of good moral character.
6. To the care of some training school.
7. To an industrial school as provided by law.

8. To the care of some association willing to receive it, and which embraces within its objects the purpose of caring for or obtaining homes for dependent, neglected or delinquent children, and which has been approved by the Board of State Charities as provided by law.

Relative to the optional methods of commitment specified, attention is directed to the question of the liability of the county for the expense incident to such commitments.

It is noted that the only authority contained in section 1653 G. C. for payment of the committed child's board by the county commissioners, may be found in the phrase "for which the county commissioners in the county in which it has a settlement shall pay reasonable board." Judged from the position the phrase occupies as it appears in the opening paragraph of the section, it is concluded that the same may be said to refer only to the optional commitment immediately preceding the phrase, and which is, a children's home in another county, willing to receive such child, and for which the county commissioners of the county in which it has a settlement, shall pay reasonable board. Hence the language of the phrase considered, together with the position it occupies in the section, is thought to indicate the legislative intention of limiting the authority of the county commissioners for the payment of board of such children to those cases where there is no children's home provided in the county, of the child's settlement, and commitment is made by the Juvenile Court of such children to a children's home in another county.

An examination of section 3092 G. C. seemingly supports such a conclusion since this section expressly provides for the payment of board by the county commissioners, of such children as may be placed in the care of private families within the county by the juvenile court, in the event that there is no children's home in the county, or in event of the abandonment of one previously existing. It would seem therefore that section 1653 G. C., would not furnish the county commissioners, with the authority to pay the board of the children committed by the Juvenile Court to the care of private families or individuals, since that contingency is apparently provided for only in those cases where there is no children's home within the county, or in the event of abandonment as previously mentioned. It is not believed moreover, that there is any other statutory provision authorizing the payment of such an expense from the county treasury, and since the board of county commis-

sioners represents the county in respect to its financial affairs, only so far as authority is given it by statute, it can only be properly concluded that a negative answer should be given your first question.

The second question indicated in your inquiry appears to be in a sense hypothetical, in that the facts do not state that actual commitment has been made or the nature of such commitment, and under the circumstances it becomes obvious that definite legal conclusions are impracticable if not wholly impossible. It may be noted however that section 3093 G. C. provides that children permanently committed to a children's home, shall be under the exclusive guardianship and control of the trustees of such institution, and it is believed that it is such permanently committed children to be contemplated by the provision of this section, where authority is given the trustees, to board such children with private families outside of the institution when the circumstances of the case would seem to warrant such action. Although your second question does not state, whether the commitments contemplated are permanent or temporary ones, it may be generally stated in answer to that portion of the question however, relating to the alternatives, the Juvenile Court may adopt in the procedure of committing neglected and dependent children to the care of boards, persons and institutions, that such court is authorized to adopt at its discretion any of the optional provisions of sections 1652 and 1653 G. C. although it may be noted that the payment of board of neglected and dependent children by the county commissioners in cases where commitments are made to private individuals or persons is limited to those cases where there is no children's home in the county, or, in the event of the abandonment of one previously existing.

Answer to your third question may be briefly made in the negative, since it is believed that section 3092 G. C. as amended in 109 O. L., p. 533, although slightly changed in other respects from the original section, still provides in chief for those cases arising wherein there is no children's home within the county, and consequently is not thought to be applicable to counties where such a home already exists.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2916.

STATE BOARD OF ACCOUNTANCY—FEE CHARGED APPLICANTS FOR EXAMINATION MAY NOT BE RETAINED BY BOARD IN EVENT APPLICANT IS PRECLUDED FROM EXAMINATION BY REASON OF INELIGIBILITY--SEE SECTION 1375 G. C.

Under section 1375 G. C. the fee of twenty-five dollars charged applicants for the examination in accountancy provided by section 1374 G. C. may not be retained by the state board of accountancy in event the applicant is precluded from such an examination by reason of ineligibility, but under such circumstance should be returned to said applicant.

COLUMBUS, OHIO, March 9, 1922.

MR. L. W. BLYTH, *Secretary, State Board of Accountancy, 1400 Hanna Building, Cleveland, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows: