

that "in cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, *such boards may declare such orders and regulations to be emergency measures.*" While very possibly an epidemic of hydrophobia would be such an emergency as to give a board of health just grounds for declaring an emergency, very apparently in this case the district board of health did not consider that such epidemic existed. In fact, the order itself makes no statement to the effect that any dogs in the district had been found to have hydrophobia. The order merely says that "it appears that there is danger of hydrophobia in Monroe County." The district board of health having found that there appeared to be danger of hydrophobia in Monroe County, and that many children and animals had been recently attacked and bitten by dogs, ordered that all dogs be immediately vaccinated. The board might further have found that the conditions or events which gave rise to such order were such as to endanger the public health and upon such finding declare an emergency to exist. However, the board has made no finding of the existence of an emergency and I am of the opinion that the wording of the order itself precludes any construction, holding that the board declared this order to be an emergency measure.

In answer to your question as to the validity of this order, with a view of instituting criminal prosecution for its violation, it is expressly provided in Section 1261-42, General Code, that all orders of the board of health of the general health district intended for the general public shall be adopted, recorded and certified as are ordinances of municipalities. You state that these provisions of the section have not been complied with. There can be no question but that these provisions are mandatory, and, furthermore, under the well-established principle that all criminal statutes must be construed strictly, I am of the opinion that an action instituted to prosecute a violation of this order could not be maintained. In view of the foregoing, it is, therefore, unnecessary to suggest a form of affidavit.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

263.

DEPENDENT CHILD—COMMITMENT BY JUVENILE COURT TO PRIVATE CHILDREN'S HOME—LIABILITY FOR SUCH CHILD'S MAINTENANCE—FURTHER DISPOSITION OF SAID CHILD.

*SYLLABUS:*

1. *When a "dependent child" is permanently committed by a juvenile court to a private children's home or orphan asylum, duly accredited as such by the Board of State Charities, such private children's home becomes the sole and exclusive guardian of such child and is responsible for the child's future care, sustenance and medical attention, until such time as other lawful disposition is made of it.*

2. *While a child remains under the sole and exclusive guardianship of a duly accredited private children's home, under commitment of a juvenile court, there is no authority for the extension of poor relief from public funds for the benefit of such child.*

3. *Any institution, association or board to which a child has been permanently committed by a juvenile court may petition said court to make other disposition of such child because of physical, mental or moral defects.*

COLUMBUS, OHIO, April 4, 1929.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“I will thank you for an opinion based upon the following facts and circumstances:

One -----, aged about four years, was born in Adams County, Ohio, where she lived until April 25, 1927, at which time she was declared to be a dependent child by the Juvenile Court of Adams County, Ohio; and on said date she was committed to the permanent care and custody of the Brethren's Home at Greenville, Ohio, an institution supported by the Church of the Brethren for the district of said church in which Greenville, Ohio, is located.

After being in the custody of the Brethren's Home from April 25, 1927, it developed, about the 2nd day of December, 1928, that said child was suffering from a tubercular condition of the right hip bone, and that special care and hospital treatment was necessary. The Brethren's Home have petitioned Darke County for assistance in providing the necessary medical attention and hospital treatment of this child. The matter in which I desire the expression of your opinion is as follows:

When the Juvenile Court of Adams County, Ohio, committed the above subject to the Brethren's Home of Darke County, Ohio, did the child lose its legal residence in Adams County, Ohio, to such extent that Adams County would be released from the obligation to care for said child; and, further, does the child have such a legal residence in Darke County, Ohio, as would place said county under obligation to render assistance under the conditions as hereinbefore described?”

Sections 1643, 1645, 1653 and 1672, General Code, found in the chapter of the General Code relating to the Juvenile Court, read in part as follows:

Sec. 1643. “When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the Board of State Charities, or of an institution or association, certified by the Board of State Charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment.

\* \* \* ”

Sec. 1645. “For the purposes of this chapter, the words ‘dependent child’ shall mean any child under eighteen years of age who is dependent upon the public for support; or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who begs or receives alms; or who is given away or disposed of in any employment, service, exhibition, occupation or vocation contrary to any law of the state; who is found living in a house of ill fame, or with any vicious or disreputable persons or whose

home, by reason of neglect, cruelty or depravity on the part of its parent, step-parent, guardian or other person in whose care it may be, is an unfit place for such child; or who is prevented from receiving proper education or proper physical, mental, medical or surgical examination and treatment because of the conduct, inability or neglect of its parents, step-parents, guardian or other person in whose care it may be; or whose condition or environment is such as to warrant the state, in the interest of the child, in assuming its guardianship."

"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. \* \* \* "

Sec. 1672. "If the court awards a child to the care of an institution, association, or a state board in accordance with the provisions of this and other chapters, the judge shall in the award or commitment designate whether it is for temporary or permanent care and custody. \* \* \* Whenever a child is committed to the permanent care of an institution, association or a state board, it shall ipso facto come under the sole and exclusive guardianship of such institution, association or state board, whereupon the jurisdiction of the court shall cease and determine, except that such institution, association or board, to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects. \* \* \* "

I assume for the purposes of this opinion, that the Brethren's Home in Darke County is a private orphan asylum approved and duly accredited as such by the State Board of Charities, and is therefore eligible to receive the child in question upon commitment of the Juvenile Court of Adams County.

The commitment having thus been made to the permanent care of the said Brethren's Home according to law, the said home in accordance with the terms of Sections 1643 and 1672, supra, became the sole and exclusive guardian of the said child, and the jurisdiction of the Juvenile Court of Adams County ceased at the time of such commitment. Similar statutory provision is made with reference to the guardianship of a child committed to the permanent care of a public or private children's home in Section 3093, General Code, which provides in part as follows:

"All wards of a county or district children's home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the Juvenile Court to the permanent care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. \* \* \* "

When commitments are made by a Juvenile Court to a private children's home or orphans' asylum there is no provision of law authorizing the court to order any part of the cost of the child's subsistence in that orphan asylum to be paid from public funds. The court is authorized by the terms of Section 1653, General Code, to make an examination regarding the income of the parents or guardian of a minor committed, as provided by said section, to a private, public or semi-public children's home and may order that such parent or guardian pay the institution to which the minor has been committed, reasonable board, which order, if disobeyed, may be enforced by attachment as for contempt, and I have no doubt that where the circumstances warrant it, the court would have authority to order the parent or guardian to pay any other necessary items of expense incident to the support of the child, but there is no authority for the court to make any order, when commitments are made to private children's homes, to have any part of the support of children so committed paid from public funds.

It will be observed from the terms of Section 1653, *supra*, that, where a commitment is made by a Juvenile Court to the children's home in another county, the county commissioners of the county in which the child had a settlement shall pay reasonable board to the county where the children's home to which the commitment was made is located. This provision applies to public children's homes and not to private homes.

When a commitment is made to a private children's home or orphan asylum under circumstances whereby that orphan asylum becomes the sole and exclusive guardian of the child, it follows that the orphan asylum is responsible for any expenses which may be involved in the care and support of the child. Special provision is made for the education of the child by Section 7681, General Code, wherein it is provided that the cost of the child's tuition in the public schools of the district where the private children's home or orphan asylum is located shall be paid by the school district of the State of Ohio where the child last resided before being admitted to the home and, if it was not a resident of the State of Ohio prior to such admission, the home or asylum shall pay from its own funds such tuition as may be agreed upon. This statute, however, has reference only to the payment of tuition in the public schools and there is no similar statute providing for the care or the cost of necessary medical attention which said child may need.

It will be noted, however, from the provisions of Section 1672, *supra*, that an exception is made to the termination of the jurisdiction of the Probate Court making such a commitment as is here involved. After providing that when a child is committed to the permanent care of an institution, association or State board, the jurisdiction of the court shall cease and terminate, it is provided:

"Except that such institution, association or board to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects."

It seems clear, from the foregoing, that it was the intention of the Legislature to relieve institutions who had received commitments of children from juvenile courts from the burdens of unforeseen mental, moral or physical defects in such children, whether such defects existed at the time of commitment or developed afterwards, by permitting them to invoke the jurisdiction of the same Juvenile Court which had formerly exercised jurisdiction in the case. There is no authority in the statute for any other than the institution itself to take the initiative in making application to the Juvenile Court to make some other and further disposition of a child having such

physical, mental or moral defects, and it would seem that if the institution does not see fit to make this application the Juvenile Court would have no jurisdiction to act in the premises. In that case, the institution would be obligated to provide from its private funds for whatever care and attention a child, which had been permanently committed to it by a Juvenile Court, might need, and, if the administration of the institution should break down because of a lack of funds or otherwise, it would be the duty of the proper authorities in the county where the institution is located to look after the inmates of the institution in the same manner as though those inmates were wards of private individuals, residents of the county.

In accordance with the familiar principle of law that public funds may not be expended except upon the authority of law, and in view of the fact that there is no provision of law authorizing the expenditure of the public funds of Adams County for the relief of minors who are the wards of guardians resident in Darke County, I am of the opinion that public relief may not be extended from the public funds of Adams County for the child in question so long as the child's status with reference to its wardship remains as it now is. This status may however be changed upon application to and order of the Juvenile Court that made the commitment and fixed the guardianship of the child in the first instance, to wit, the Juvenile Court of Adams County.

Before, however, the Juvenile Court in Adams County may make such order, its jurisdiction must be invoked by the trustees or administrative officials of the Brethren's Home, whereupon the court may make such order as will conduce to the welfare of the child and relieve the Brethren's Home from the burden of what seems to be a physical defect that was probably not known to any of the parties at the time of the original commitment of the child to the home. The statute does not direct what the court's duty is under such circumstances. In fact it makes no provision whatever as to the court's authority or duty when a petition is filed by an institution to whom a permanent commitment of the child had previously been made to have other disposition made of the child on account of physical, mental or moral defects.

It would seem, however, that the very fact that the statute authorizes an application to the Juvenile Court by petition, under circumstances such as these, would indicate that the court should, after hearing the application and finding the fact to be that the child has some physical, mental or moral defect, place the burden of remedying the defect, in so far as possible, on the parties who would have in the first instance been responsible for necessary relief had no previous commitment been made. However the only statutory directions in this respect is that the court be asked to "make other disposition of such child." What that "other disposition" shall be is purely within the discretion of the court in the light of all the circumstances.

When the Brethren's Home accepted the commitment in the first place, and thereby assumed the responsibilities of the sole and exclusive guardianship of the child, it assumed the liability to care for the child in all necessary respects the same as any guardian of a minor, and the only way it may relieve itself of that liability is by application to the Probate Court of Adams County and a showing that such physical, mental or moral defects have developed as will induce the court to make other disposition of the child.

The only circumstances that would warrant the authorities of Darke County in charge of poor relief to extend such relief for this child would be if the child should again be declared a dependent or its guardian a pauper, which is not likely so long as it remains under the sole and exclusive guardianship of the Brethren's Home.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*