

OPINION NO. 81-105**Syllabus:**

1. The Superintendent of the Ohio Reformatory for Women does not have the authority to authorize emergency medical care for an infant born to an inmate of that institution.
2. The Department of Rehabilitation and Correction lacks the statutory authority to pay for the emergency medical care provided to an infant born to an inmate of the Ohio Reformatory for Women after the infant's transfer to a medical facility different from the one where the mother is receiving medical care.

To: George F. Denton, Director, Department of Rehabilitation and Correction, Columbus, Ohio

By: William J. Brown, Attorney General, December 23, 1981

I have before me your request for my opinion in response to several questions concerning the duty of the Department of Rehabilitation and Correction to provide emergency medical care for infants born to inmates at the Ohio Reformatory for Women. Conversations between a member of my staff and your office have narrowed your inquiry to the following concerns: whether the Superintendent of the Reformatory has the legal authority and responsibility to authorize emergency medical care for such an infant and, additionally, whether the Department is financially responsible for the care provided.

It is my understanding, based on information contained in your letter, that your questions arise in the context of the following facts. In some instances, women who are pregnant are convicted of a crime and are sentenced to the custody of the Ohio Reformatory for Women. Usually, the children of such women are born prior to the mothers' release or parole. The deliveries take place at Union County Memorial Hospital. Occasionally, an infant is born and is in need of emergency medical services which Union County Memorial Hospital cannot provide. When such services are required, the infant is transferred to Children's Hospital in Columbus. It is the emergency medical care provided at Children's Hospital to which your questions refer.

Your first question concerns the authority of the Superintendent to authorize medical care for an infant born to an inmate of the Ohio Reformatory for Women. The Superintendent is appointed by and serves at the pleasure of the Director of the Department of Rehabilitation and Correction. R.C. 5120.38. Under the control of the Director, the Superintendent has "entire executive charge of the institution for which [he] is appointed." R.C. 5120.38. The Department and its officials, such as the Superintendent, may not, however, take action in those areas in which the Department has not been given authority to act. See generally Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975) (administrative agency has only such power, express or implied, as is granted by statute). The Department is responsible for, among other things, the "control, care, and custody" of those persons committed to the institutions under its control. R.C. 5120.16. The Department is not, however, given any authority with regard to those persons who have not been committed in some manner to the Department. Thus, the Superintendent, as an official of that Department, lacks the authority to act concerning those persons who are not by statute under the control of the Department.

There can be no doubt that an infant born to an inmate of the Ohio Reformatory for Women is not a person who has been committed to the "control, care, and custody" of an institution under the management of the Department. "No

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statute exists which says that a child born to a woman who is an inmate of a state institution thereby takes the status of the mother." 1921 Op. Att'y Gen. No. 2404, p. 808, at 808. See also 1949 Op. Att'y Gen. No. 1005, p. 632 at 632 ("An illegitimate child born to an inmate of a state mental institution has no duty as to its care owed to it by the state of Ohio"). Consequently, the Department and its employees have no authority to authorize medical care for an infant born to an inmate of the Ohio Reformatory for Women.

The above conclusion does not mean that the Superintendent may ignore the existence of such an infant and its need for care. There is an obvious difference between making access to medical care available and authorizing the type of care which is ultimately provided. In a situation in which the infant is not already in a hospital surrounding—for instance, if the child is born at the Reformatory—the Superintendent clearly is under an obligation to bring the infant's condition to the attention of the appropriate medical personnel. This is true particularly since the secure nature of a reformatory precludes the possibility of outside awareness of and assistance to the infant. See United States v. Fitzgerald, 466 F.2d 377, 380 (D.C. Cir. 1972) ("Having custody of the prisoner's body and control of the prisoner's access to medical treatment, the prison authorities have a duty to provide needed medical attention"). The Superintendent is not, however, permitted to authorize medical care, in the sense of signing consent forms or participating in the decision on which medical course of action will be followed. See generally 1941 Op. Att'y Gen. No. 4561, p. 988 (convicted felon who is imprisoned retains those rights, including parental rights, not taken away by statute).

Your second question concerns the duty of the Department to pay for the emergency medical care provided to the infant of an inmate of the Ohio Reformatory for Women. It is a well-established principle that a department of state government may expend funds only pursuant to a statutory authorization. Arnold v. Board of Education, 20 Ohio L. Abs. 220, 222 (1935) ("An official having the keeping or distribution of public money must do so in accordance with law, and if distributed or expended in violation of the law, such, of course, would be unauthorized and illegal").

As was noted above, the Department is responsible for the "control, care, and custody," of the persons committed to it. R.C. 5120.16. Thus, the Department would be required to provide medical care to a pregnant inmate and to pay for costs incidental to that care. Estelle v. Gamble, 429 U.S. 97 (1976) (government must provide medical care to incarcerated individuals). The question of when a particular cost is so far removed from the care of the mother as to be no longer incidental to the birth is largely a question of fact which this office is not equipped to answer. It is clear, however, that emergency care provided to an infant after that infant's transfer to a medical facility different from the one treating the mother does not fall within the category of costs incidental to the care of the mother. Consequently, such care falls outside the statutory authorization to expend funds which is derived from R.C. 5120.16. My research has disclosed no other express or implied grant of authority for the Department to spend funds appropriated to it for the care of the infant of a female inmate. Thus, the Department may not pay for the emergency medical care provided infants of inmates at the Ohio Reformatory for Women after their transfer to a medical facility different from the one where the mother is receiving treatment.

Therefore, it is my opinion, and you are advised, that:

1. The Superintendent of the Ohio Reformatory for Women does not have the authority to authorize emergency medical care for an infant born to an inmate of that institution.
2. The Department of Rehabilitation and Correction lacks the statutory authority to pay for the emergency medical care provided to an infant born to an inmate of the Ohio Reformatory for Women after the infant's transfer to a medical facility different from the one where the mother is receiving medical care.