

231.

BOND—GIVEN AS A CONDITION OF SUSPENSION OF SENTENCE
IMPOSED UPON PARENT FOR FAILURE TO SUPPORT MINOR
CHILD—DISPOSITION OF MONEY IF PARENT FAILS TO COMPLY.

SYLLABUS:

Where as a condition of suspension of sentence imposed upon a parent convicted of failing to support a minor child in violation of Section 1655, General Code, a juvenile judge, under authority of Section 1666, General Code, requires such parent to give a bond to the state of Ohio, conditioned upon his complying with the court's order with reference to payments for the support of the minor involved, such bond is for the benefit of the minor child and the political subdivision or taxing district which would suffer the burden of maintaining such child and upon default by the parent and collection of the bond the funds should be used for the maintenance and support of the child.

COLUMBUS, OHIO, March 24, 1927.

HON. WILLIAM B. JAMES, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date in which you ask my opinion upon the following statement of facts:

“An affidavit was filed in the Probate Court by virtue of Section 1655 charging one E. J. B. with the failure to provide support for his minor child, V. B. B. was brought in and before sentence gave a bond signed by himself and his father, J. H. B. and one A. P. The bond acknowledges the signers thereof to owe the state of Ohio the sum of \$500.00 and was conditioned that E. J. B. shall pay promptly \$4.00 per week payable on the first day of each week, beginning on the 17th day of March, 1924, for the support and maintenance of his minor child, the payments to continue to be made weekly until said child has reached the age of sixteen years, to a trustee therein mentioned, for the benefit of the child, in compliance with an order of the court to that effect entered on the 18th day of March, 1924. E. J. B. had failed to make payments since in August of 1926 and his whereabouts are unknown. J. H. B., one of the bondsmen, has paid the bond of \$500.00 into the Probate Court. The judge is in doubt as to whether this money should be forfeited to the state, or could be used for the support of the child. It was the intention when this bond was given that it would act as security for the payments to be made to the child, and this is what the bondsmen desired.”

You further state that “you gave an opinion to the judge that the money could be used toward making the payments to the child” and enclose a copy of the bond which reads as follows:

“BE IT REMEMBERED, That on the 20th day of March, 1924, E. J. B. and J. H. B. and A. P. as sureties, personally appeared in open court in the Probate Court in and for the county aforesaid and jointly and separately acknowledged themselves to owe the state of Ohio the sum of five hundred dollars (\$500.00) to be levied of their respective goods and chattels, lands and tenements if default be made in the condition following, to-wit:

The condition of this recognizance is such that if the above bound E. J. B. shall pay promptly four dollars (\$4.00) per week, payable on the 1st day of each week beginning on the 17th day of March, 1924, for the support and maintenance of his minor child, V. B., said payments to continue to be made weekly until said child has reached the age of sixteen years, and to be made

to Miss N. R., as trustee, for the benefit of said child, in compliance with the order of the court entered the 18th day of March, 1924, then this recognition shall be void; otherwise it shall be and remain in full force and virtue in law."

Statutory authority for the taking of a bond of the nature above set forth is found in Sections 1655, et seq., of the General Code, particularly Sections 1666 and 1667, which read as follows:

"Sec. 1666. In every case of conviction and where imprisonment is imposed as part of the punishment, such judge may suspend sentence upon such conditions as he imposes."

"Sec. 1667. When, as a condition of suspension of sentence, bond is required and given, upon the failure of a person giving such bond to comply with the terms and conditions thereof, such bond may be forfeited, the suspension terminated by the judge, the original sentence executed as though it had not been suspended, and the term of any jail or workhouse sentence imposed in such case shall commence from the date of imprisonment of such person after such forfeiture and termination of suspension. Any part of such sentence which may therefore have been served, shall be deducted from any such period of imprisonment."

Section 1655, General Code, provides in part that:

"Whoever is charged by law with the care, support, maintenance or education of a minor under the age of eighteen years, and is able to support or contribute toward the support or education of such minor, fails, neglects or refuses so to do * * *, or whoever, being the father of an illegitimate child under the age of sixteen years and able to support or contribute toward the support of such child, fails, neglects or refuses so to do, upon complaint filed in the juvenile court, as provided in this chapter, shall be fined not less than ten dollars, nor more than five hundred dollars, or imprisoned not less than ten days nor more than one year, or both; provided, if he shall pay promptly each week for such purpose to the court, or to a trustee named by such court, a sum to be fixed by it, sentence may be suspended."

Similar provisions are found in Sections 13008, et seq., General Code, which make it a felony for a father to fail, neglect or refuse to provide a child "with the necessary or proper home, care, food and clothing," while Section 12970, General Code, makes it an offense for a parent or guardian of a child under the age of sixteen unlawfully to abandon such child.

Before their amendment in 1923 (110 v. 296) Sections 12110, et seq., General Code, in the chapter entitled "Bastardy" made provision for the support of illegitimate children, Section 12114 providing that when a compromise in a bastardy proceeding was effected, the defendant should give a bond to the state "conditioned to save any county, township or municipal corporation within the state free from all charges for the maintenance of such bastard child."

Concerning Sections 12110, et seq., the Supreme Court of Ohio in the case of *McKelvy v. State*, 87 O. S. 1, said at page 8 of the opinion:

"The main purpose of the legislation covered by the above sections is shown by its history and the decisions of this court to be for the support of bastard children and to prevent their becoming a charge upon the public,"

and held that in enacting Sections 13008, et seq., the legislature had "provided practically the same remedy to accomplish the same purpose under both acts."

In *Seaman v. The State of Ohio*, 106 O. S. 177, in speaking of Sections 13008, et seq., the court said at page 184:

"The intent of this legislation was to compel persons charged by law with the support of designated dependents to meet the full measure of their obligation to such dependents and society. The converse of the proposition may be stated that *it was the purpose to relieve society of a burden that properly belonged to one charged by law with its obligation*. The fundamental objective will be referred to." (Italics the writer's.)

While I find no reported case expressly so saying, it is apparent that the object of Sections 1665, et seq., supra, is the same as that of Sections 13008, et seq., namely, to relieve society of a burden properly belonging to one charged by law with its obligation.

This being true the bond in the instant case being given to the State of Ohio it must be said that the bond is given to the state as trustee for the benefit of the minor involved and the political subdivision or taxing district which would suffer the burden of maintaining such child in case a parent failed in his duty. Section 13010 which makes provision for the giving of a bond by one convicted of the crime denounced in section 13008 expressly provides that such bond shall be given to the State of Ohio.

You state in your letter that the sureties on the bond above set forth have elected to pay the cash into the Probate Court and there is therefore no issue raised as to the validity of the bond, the only question being whether the amount so paid in should go to the State of Ohio named as obligee in the bond or be used for the support of the minor child.

In view of what is said above as to the nature and purpose of acts like those under consideration, namely, to protect the public from the burden of maintaining minor children, it is my opinion that the funds in the hands of your Probate Court should be used for the support of the child in question. As to how this should be done is a matter which may easily be determined by the Probate Court in which the proceedings in which the bond was given were had. In the bond the matron of the Wood County Detention Home was named as trustee for the benefit of the child, and it is suggested that the fund in question might be held by the court and disbursed by it at such times and in such amounts as it deems proper to said trustee for the support and maintenance of the minor child.

Specifically answering your question I am of the opinion that where as a condition of suspension of sentence imposed upon a parent convicted of failing to support a minor child in violation of Section 1655, General Code, a juvenile judge, under authority of Section 1666, General Code, requires such parent to give a bond to the State of Ohio, conditioned upon his complying with the court's order with reference to payments for the support of the minor involved, such bond is for the benefit of the minor child and the political subdivision or taxing district which would suffer the burden of maintaining such child and upon default by the parent and collection of the bond the funds should be used for the maintenance and support of the child.

Respectfully,

EDWARD C. TURNER,

Attorney General.