

Consequently, I am of the opinion that,

1. The legislative authority of a municipal corporation may, in the absence of a charter provision to the contrary, include in the cost of a street improvement, all or a part of which is assessed against abutting property, the expense of the relocation of equipment of a municipally owned public utility located in such street, which relocation is made necessary by such improvement.

2. The expense of making core tests on street improvements may be made part of the cost of such street improvement, all or a part of which is assessed against abutting property owners.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2865.

COUNTY COMMISSIONERS — UNAUTHORIZED TO EXPEND
COUNTY FUNDS FOR BOARDING PSYCHOPATHIC CHILD OUT-
SIDE TERRITORIAL LIMITS OF OHIO.

SYLLABUS:

County Commissioners have no authority to contribute to the expense of, boarding a psychopathic child outside the territorial limits of Ohio even though such child is in indigent circumstances.

COLUMBUS, OHIO, June 28, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

In a county where, in the judgment of the county commissioners, the best interests of dependent wards of the county would be served by the appointment of a County Child Welfare Board, and such Board, with the approval of the Board of State Charities, is appointed as provided in Section 3092 of the General Code, may such county welfare board legally commit children under its care to an industrial farm located outside the state, and may the county commissioners pay the cost of maintaining a child so appointed?

We are enclosing herewith certain data with reference to the industrial farm where a child was committed, and a statement from Mr. C. H. Calhoun, executive psychologist of the State Bureau of Juvenile Research; also correspondence between the acting agent of the Lake County Child Welfare Board and Mr. Calhoun.”

The facts of the case and the statement from the executive psychologist of the State Bureau of Juvenile Research are substantially as follows:

G. O., a minor from Lake County, was sent to the Berkshire Industrial School, Canaan, New York, by the Lake County Child Welfare Board. The executive psychologist of the State Bureau of Juvenile Research states in his correspondence that this child requires "a type of care which is not provided by either private or public institution in Ohio." As the result of a study made by the State Bureau of Juvenile Research it was felt that it would be best for his welfare to place him in a custodial school.

G. O. is abnormal mentally. Consequently his behavior is peculiar and different from normal children. He was nervous and high-strung and his condition was becoming worse as he grew older. He is now ten years of age and his activities make him a problem child in that he does not have the group-play-instinct. The boy's behavior and attitude and mental condition at the time of his second observation (January, 1933) to (June, 1933) leads to the conclusion that he is a psychopathic child—the term psychopathic to be noted as a mental condition between normal mental health and mental illness or a psychosis. The psychologist further states that, "the only satisfactory method of treating a psychopath, known to us, is the placement of the individual in an institution where, for a period of years, he can be given habit training and can be taught something practical and useful in the educational and vocational standpoints." He further states:

"The State of Ohio does not provide any facilities for the care and training of this type of child. It is true that many of them are committed to our State Industrial School and it is also true that very few of those committed ever profit materially from their stay in those institutions. Our Industrial Schools do not keep the average child very long, neither are they equipped by suitable personnel or organization to adequately train children of this type. Also, unfortunately, there are no private schools in the State of Ohio for this type of child. Most of the schools that have been developed for the behavior child are located in the eastern section of the United States. * * * Occasionally in extreme cases of psychopathy we have been able to provide for their care in our Ohio Hospitals for the Insane. However, these hospitals are also not equipped to care for children, it being unfair to the child to place him in wards with adults who have definite mental disorders. Also, none of our hospitals are equipped from the educational standpoint, so that they might give the child educational training. When custodial care was the sole need we have recommended placement in the State Hospital, but so few of the children fit into that classification that this recommendation is seldom made."

G. O. was placed at the Berkshire Industrial Farm in New York

as a boarding child at \$7.00 per week cost by the Lake County Child Welfare Board. The Judge of the Juvenile Court in Lake County knew of this placement, having committed G. O. to the Lake County Child Welfare Board for the express purpose of his placement in the Berkshire Industrial Farm in New York. The Lake County Child Welfare Board claims to be acting as agent of the Juvenile Court in their placement of the child at the Berkshire Industrial Farm.

The executive psychologist claims that this type of boy should not be regarded as a delinquent but rather as a psychopathic child, a type of child which needs a longer period of care and training which will tend to make him more normal.

The County Child Welfare Board is appointed by virtue of the authority granted by Section 3092, General Code, which provides in part:

"Provided, that with the approval of the Board of State Charities, when in the judgment of the county commissioners, the best interests of the dependent wards of the county will be subserved thereby, they may appoint a county child welfare board of four * * * Such board shall have the *same powers and duties relative to dependent children as are now given to trustees of county children's homes*, so far as applicable, particularly relating to the appointment of a visitor for the finding and supervising of family homes for such children." (Italics the writer's).

Section 3089, General Code, provides in part:

"The board of trustees of a home shall receive for care and treatment children under the age of eighteen years, who have resided in the county not less than one year, and such other children under such age from other counties in the state where there is no home, * * *; provided that the Juvenile court of the county may at any time commit a child to the board of trustees when in the opinion of the judge it should be so committed. The board of trustees may contract with persons, hospitals, and other agencies for care and treatment of such children as need special care outside of the home, or within the home if facilities have been provided for such care and treatment. *Closely supervised boarding homes shall be used for children who are not suitable for care in the children's home because of behavior, or mental or physical condition, and such children shall not be accepted under permanent surrender or by permanent commitment by the juvenile court.* If a ward of such home is found to be incorrigible or can be better cared for elsewhere, he or she may be brought before the juvenile court for further disposition. * * *" (Italics the writer's.)

I have been informed that Lake County has no Children's Home. Section 3092, General Code, provides in part:

"In any county where such home has not already been provided, or where such home has been abandoned by the county commission-

ers, as provided by law, the board of county commissioners may enter into a contract for the care of its neglected or dependent children with a county children's home in another county, or with any institution or association *in the state* which has for one of its objects the care of dependent or neglected children, provided such institution or association has been duly certified by the board of state charities; or the board of county commissioners may pay reasonable board and provide suitable clothing and personal necessities as well as medical, dental and optical examination and treatment of dependent or neglected children who may be placed in the care of private families within the county. Provided that in any such case such dependent or neglected children shall be duly committed to the aforesaid institution or association or placed in the care of a private family by the juvenile court as provided by law. * * * (Italics the writer's).

Section 3093, General Code, provides in part:

" * * * The board of trustees may by contracts or otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of board, to a competent person, whenever the interests of such child require such an arrangement. * * *"

Section 3098, General Code, provides:

"The trustees shall visit, or cause to be visited, each child placed out by them, at least once in each year, and as much oftener as the welfare of the child requires. The trustees may at any time vacate any agreement when the welfare of the child may demand it, and replace it in another family home or return it to the institution."

Section 1352-12, General Code, provides:

"The parents, parent, guardian or other person or persons having the custody of a child, may enter into an agreement with any public, semi-public or private association or institution of this state established for the purposes of aiding, caring for or placing children in homes, and which has been approved and certified by the division of charities, department of public welfare, placing such child in the temporary custody of such institution or association; or such parent, guardian or other person may make an agreement surrendering such child into the permanent custody of such association or institution, to be taken and cared for by such association or institution, or placed in a family home. * * *"

With respect to the powers of the Juvenile Courts in committing children, the following sections of the General Code are pertinent. They read in part:

Sec. 1652.

"In case of a delinquent child the judge may continue the hear-

ing from time to time and may commit the child to the care or custody of a probation officer, and may allow such child to remain at its own home, subject to the visitation of the probation officer or otherwise, as the court may direct, and subject to be returned to the judge for further or other proceedings whenever such action may appear to be necessary; or the judge may cause the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer, and the further order of the judge or he may authorize the child to be boarded in some suitable home in case provision be made by voluntary contribution or otherwise for the payment of the board of such child, until suitable provision be made for it in a home without such payment; or the judge may commit such child, if a boy, to a training school for boys, or if a girl, to an industrial school for girls, or commit the child to any institution within the county that may care for delinquent children, or be provided by a city or county suitable for the care of such children. In no case shall a child, committed to such institutions, be confined under such commitment after attaining the age of twenty-one years; or the judge may commit the child to the care and custody of an association that will receive it, embracing in its objects, the care of neglected or dependent children, if duly approved by the board of state charities, as provided by law. * * *

Section 1653, General Code, provides in part:

“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 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 purpose 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. * * *

Section 1683, General Code, provides:

“This chapter shall be liberally construed to the end that proper guardianship may be provided for the child, in order that it may be

educated and cared for as far as practicable in such manner as best subserves its moral and physical welfare, and that, as far as practicable in proper cases, the parent, parents or guardian of such child may be compelled to perform their moral and legal duty in the interest of the child."

I call your attention to an analogous opinion of one of my predecessors in office, being Opinions of the Attorney General for 1929, Vol. III, page 1780, which held as disclosed by the second branch of the syllabus:

"2. County commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective whether such person is indigent or otherwise."

Neither the statutes relative to the powers of the Juvenile Court nor the statutes relative to the powers of the County Child Welfare Board which gives them the same powers as those given to the trustees of the County Children's Home, make provision for the placement of children in institutions outside the territorial limits of the state of Ohio. On the other hand, these statutes quoted supra, are expressive of a legislative intent to commit children either in the category of "delinquent" or the category of "dependents" or "neglected" in institutions or approved family homes within the territorial limits of Ohio. Section 1352-12 and Section 3092, General Code, even expressly say associations or institutions "of this state." In my opinion all the sections of the General Code, referred to supra, are to be interpreted as authorizing commitments only within the State of Ohio, as the presumption is always against construction which would give to statutes an extra-territorial operation and effect. See Black on Interpretation of Laws, Section 42.

It might well be as is stated in the attached memoranda to your request that there is a definite need in this state for custodial schools for a class of children to be classified as psychopathic children, who require a type of care which is not provided by either public or private institutions in Ohio. However, the matter of such necessity is one to be addressed to the General Assembly of Ohio as it is not the province of the office of the Attorney General to attempt to enlarge statutes in the guise of interpretation in such manner as to usurp the law-making function of the legislative branch of the government. Even though in such type of cases it might be advisable as a matter of public and social policy to place such psychopathic children in a custodial school outside the State of Ohio, inasmuch as funds may not be drawn from the public treasury except in pursuance to express provisions of law, and the law has not as yet authorized the placing of psychopathic children in institutions outside the territorial limits of Ohio at the expense of the county treasury, I am constrained to the opinion that the same may not be done.

Specifically answering your inquiry, it is my opinion that county commissioners have no authority to contribute to the expense of boarding a psychopathic child outside the territorial limits of Ohio even though such child is a resident of that county and is in indigent circumstances.

Respectfully,

JOHN W. BRICKER,
Attorney General.