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CHILD CARE—INSTITUTION—ASSOCIATION—TERMS NOT SUFFICIENTLY BROAD TO COMPREHEND DAY CARE CENTERS, DEPARTMENT STORES THAT MAINTAIN NURSES OR PLAY CENTERS, BABY SITTERS, MATERNITY WARDS IN HOSPITALS OR ANY OTHER PERSONS ENGAGED IN CARING FOR CHILDREN—NOT COMMITTED TO CUSTODY BY ORDER OF JUVENILE COURT—NO REQUIREMENT TO LICENSE SUCH PERSONS OR ORGANIZATIONS TO CARRY ON CHILD CARE ACTIVITIES, SECTIONS 1352-1 ET SEQ., 1352-6 G. C.

SYLLABUS:

The terms "institution" and "association," as defined in Section 1352-6, General Code, are not sufficiently broad as to comprehend (1) day care centers, (2) department stores maintaining so-called nurseries or play centers, (3) "baby sitters," (4) maternity wards in public or private hospitals, or (5) any other persons engaged in caring for children who have not been committed to their custody by an order of the juvenile court; and there is no requirement in the provisions of Section 1352-1 et seq., General Code, that such persons and organizations be licensed to carry on their activities relative to child care.

Columbus, Ohio, November 9, 1951

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

This will acknowledge your request for my opinion on the following questions:

"1. Do Sections 1352-1 and 1352-6 of the General Code authorize or require the Division of Social Administration to license day care centers receiving or caring for children during the day time while the parent or parents are employed?"

"2. Do these sections authorize or require the Division to issue licenses to department stores which maintain so-called nurseries or play centers to care for children while a parent or parents are shopping?"

"3. Do these sections authorize or require the Division of Social Administration to license individuals who care for chil-

dren in a parent's home while the parent or parents are temporarily absent?

"4. Do these sections authorize or require the Division of Social Administration to license maternity wards in public or private hospitals?

"In your consideration of this question, I desire to point out that Senate Bill No. 250 was introduced in the legislature for the purpose of specifically authorizing and directing the Department of Public Welfare to license so-called day care centers for children, but this bill did not become law."

Sections 1352-1 and 1352-6, General Code, to which reference is made in your inquiry, read as follows:

Section 1352-1, General Code:

"Such board shall annually pass upon the fitness of every benevolent or correctional institution, corporation and association, public, semi-public or private as receives, or desires to receive and care for children, or places children in private homes. Annually at such times as the board shall direct, each such institution, corporation or association, shall make a report, showing its condition, management and competency, adequately to care for such children as are, or may be committed to it or admitted therein, the system of visitation employed for children placed in private homes, and such other facts as the board requires. When the board is satisfied as to the care given such children, and that the requirements of the statutes covering the management of such institutions are being complied with, it shall issue to the association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the board. No child shall be committed by the juvenile court to an association or institution which has not such certificate unrevoked and received within fifteen months next preceding the commitment.

"A list of such certified institution shall be sent by the board of state charities, at least annually, to all courts acting as juvenile courts and to all associations and institutions so approved.

"Any person who receives children or receives or solicits money on behalf of such an institution, corporation or association, not so certified, or whose certificate has been revoked, shall be guilty of a misdemeanor, and fined not less than \$5.00 nor more than \$500.00."

Section 1352-6, General Code:

"For the purpose of this chapter the words 'institution' and 'association' shall include any incorporated or unincorporated

organization, society, association or agency, public or private, which may receive or care for children; any individual who, for hire, gain, or reward, receives or cares for children, unless he is related to them by blood or marriage; and also any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 1352-1, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the duly appointed guardian thereof."

These sections must be considered in *pari materia* with Sections 1352-2 and 1352-3, General Code, since all of them relate to the same subject matter. These sections read:

Section 1352-2, General Code:

"No association whose object may embrace the care of dependent, neglected or delinquent children or the placing of such children in private homes shall hereafter be incorporated unless the proposed articles of incorporation shall have been submitted first to the board of state charities. The secretary of state shall not issue a certificate of incorporation unless there shall first be filed in his office the certificate of the board of state charities that it has examined the articles of incorporation, and that in its judgment the incorporators are reputable and respectable persons, and that the proposed work is needed, and the incorporation of such association is desirable and for the public good. Amendments proposed to the articles of incorporation of any such association shall be submitted in like manner to the board of state charities, and the secretary of state shall not record such amendment or issue his certificate therefor unless there shall first be filed in his office the certificate of the board of state charities that it has examined such amendment, that the association in question is, in its judgment, performing in good faith, the work undertaken by it, and that such amendment is, in its judgment, a proper one, and for the public good."

Section 1352-3, General Code:

"The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. County, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court that court must first consent

to such transfer. The board shall thereupon ipso facto become vested with the sole and exclusive guardianship of such child or children.

3. "The board shall, by its visitors, seek out suitable, permanent homes in private families for such wards; in each case making in advance careful investigation of the character and fitness of such home for the purpose. Such children may then be placed in such investigated homes upon trial, or upon such contract as the board may deem to be for the best interests of the child, or proceedings may be had, as provided by law, for the adoption of the child by suitable persons. The board shall retain the guardianship of a child so placed upon trial or contract during its minority, and may at any time, if it deems it for the best interest of the child, cancel such contract and remove the child from such home. The board, by its visitors, shall visit at least twice a year all the homes in which children have been placed by it. Children for whom on account of some physical or mental defect it is impracticable to find good, free homes may be so placed by the board upon agreement to pay reasonable board therefor.

"The board shall provide needed clothing and personal necessities for such children. When necessary any children so committed or transferred to the board may be maintained by it in a suitable place until a proper home is found. So far as practicable, children shall be placed in homes of the same religious belief as that held by their parents. The traveling expenses in connection with the placing of such children in homes, the amount of board, if any, and expenses for clothing and personal necessities and for mental, dental and optical examination and treatment shall be paid out of funds appropriated to the use of the board by the general assembly."

When these several statutes are considered each in relation to the other, one can reasonably infer that the term "children," as used in Section 1352-6, General Code, will comprehend only such "dependent, neglected or delinquent" children as are (1) public wards placed in the custody of the board of state charities (now the division of social administration), (2) public wards placed in the custody of a private benevolent institution or in a private home, or (3) children who are subject to being so placed. Such placement, of course, can be made only by the juvenile court under the exclusive original jurisdiction conferred on it under the provisions of Section 1639-16, General Code. From this it would follow that the term "children," as used in Section 1352-6, General Code, refers only to such children as are subject to the jurisdiction of the juvenile court.

It is proper to note here that this view is strongly supported by the fact that Sections 1352-2 and 1352-3, General Code, which refer to dependent, neglected and delinquent children, were enacted in Senate Bill No. 18, 80th General Assembly (103 Ohio Laws, 864), and that this act also included certain provisions relative to the jurisdiction of the juvenile court, including statutory definitions of "dependent child," "neglected child," and "delinquent child." The title of this act indicates that it is one "relating to children and to females under twenty-one years of age and to organizations which include within their objects matters relating to children." In this situation we may reasonably conclude that this act relates only to children in one category, i.e., those dependent, neglected or delinquent children who are subject to the jurisdiction of the juvenile court; and that it is to this class of children to which the provisions of Sections 1352-2 and 1352-3, General Code, refer.

It is clear, therefore, that the term "children," as used in these several sections, is one that is sharply limited and is restricted so as to comprehend only those dependent, neglected and delinquent minors who, by order of the juvenile court, have become public wards or have been temporarily committed to a detention home or a certified foster home under the provisions of Section 1639-22, General Code. From this it follows that the terms "institution" and "association," as defined in Section 1352-6, General Code, are not sufficiently broad as to comprehend (1) day care centers, (2) department stores maintaining so-called nurseries or play centers, (3) "baby sitters," (4) maternity wards in public or private hospitals, or (5) any other persons engaged in caring for children who have not been committed to their custody by an order of the juvenile court; and there is no requirement in the provisions of Section 1352-1 et seq., General Code, that such persons and organizations be licensed to carry on their activities relative to child care.

Respectfully,

C. WILLIAM O'NEILL

Attorney General