

2391.

DEPARTMENT OF PUBLIC WELFARE—WHEN ABLE TO DO SO MUST ACCEPT CHILD COMMITTED BY JUVENILE COURT—STATUS TRANSPORTATION TO HOME OF CHILD'S LEGAL SETTLEMENT—SEE SECTION 1639-34 G. C.

*SYLLABUS:*

*The Department of Public Welfare must accept "when able to do so" a child committed by a juvenile court under the authority of Section 1639-34 to the Department of Public Welfare for transportation to the home of said child's legal settlement, but a lack of available funds to carry on such activity would render the Department of Public Welfare unable "to do so", and therefore, under such circumstances, the Department of Public Welfare is not required to accept a child so committed.*

COLUMBUS, OHIO, April 29, 1938.

*Department of Public Welfare, Division of Public Assistance, 1209 State Office Building, Columbus, Ohio.*

GENTLEMEN:

I am in receipt of your recent communication in which you raised the question which I am, for the purpose of brevity, restating as follows:

Is the Department of Public Welfare mandatorily required to accept, upon commitment by a judge of a juvenile court, a delinquent child who has a legal settlement in a foreign state and who is committed for return to the state of his legal settlement?

The authority of the juvenile court to make such commitments is found in the following portion of Section 1639-34, General Code.

"Any dependent or neglected child which has a legal settlement in a foreign state may be committed to the state department of public welfare, division of charities, for return to the state of legal settlement."

It is readily apparent that this provision, which is part of the New Juvenile Court Act, authorizes the commitment by a juvenile court of children coming within the class described. However, we must look elsewhere to ascertain the duties of your department in regard to children so committed. Section 1352-3 provides in part as follows:

"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." (Italics the writer's.)

(By the enactment of Section 154-57, effective August 10, 1927, the powers and duties of the Board of State Charities have been transferred to the Department of Public Welfare.)

Your attention is directed to the underlined portion of the above quotation. The two quoted statutory provisions constitute the authorization of the two agencies in regard to matters of this kind and there is nothing inconsistent in the provisions. Section 1639-34, *supra*, constitutes the authorization of the juvenile court in matters of this kind, whereas Section 1352-3, *supra*, describes the duties of your department in regard to children so committed.

The language used in the portion of Section 1352-3 above quoted indicates that the Department of Public Welfare is required to accept such children "when able to do so". The qualification upon the duties of the Department of Public Welfare contemplates that under various circumstances, the Department of Public Welfare would not be in a position to accept children so committed. This condition might exist as a result of the fact that the department would not have enough personnel or facilities to handle such cases or sufficient money available in its appropriation to take care of the children so committed. The dependency of the department in regard to accepting children so committed upon its appropriation is further borne out by consideration of the provisions of Section 1352-4, General Code, which *inter alia* provides:

"The actual traveling expenses of any dependent, neglected, crippled or delinquent child and of the agents and visitors of said board shall be paid from funds appropriated to said board,  
\* \* \*"

Your communication sets forth that your department has had no funds appropriated for this purpose and, therefore, you feel that in the words of the statute, your department is not "able to do so", referring of course, to the acceptance of children so committed. In my opinion, the lack of an appropriation to carry out the function would be grounds for your department refusing the commitment of a child committed by a juvenile court to your department for transportation to the state of the child's legal settlement, for clearly under such circumstances, your department would not be in the position described by Section 1352-3 "able to do so."

In coming to the following conclusion, I have not been unmindful of the following provisions of Section 1639-56, General Code:

“The expense of transportation of children to places to which they have been committed, and the transportation of children to and from another state by police or other officers, acting upon order of the court, except that of the sheriff and his deputies, and other police officers, shall be paid from the county treasury upon specifically itemized vouchers certified to by the judge.”

In my opinion, this section does not contemplate the case in which the child has been committed to the Department of Public Welfare. The statute refers to “police or other officers, acting upon order of the court.” In the first place, I do not believe that ordinary employes of the Department of Public Welfare could be considered as “officers” in the sense that this word is used in this statute. In the second place, assuming that such employes are officers, if the court proceeds under the provisions of Section 1639-34, the commitment is not made to an individual but to the Department of Public Welfare and the employes of your department, in transporting the child to the place of his or her legal residence, would not be, in the sense indicated by the above statutory provision, “acting upon order of the court.”

With reference to the statement in your communication that your department has no appropriation available for the purposes herein discussed, I have considered the provisions of the General Appropriation Act, being Amended Senate Bill No. 369, enacted by the 92nd General Assembly and effective July 19, 1937. I find that under the general heading of “Maintenance F- Contract and Open Order Service” there is an appropriation in the amount of \$6,000 entitled “F-6—Traveling Expenses” and an appropriation to the Bureau of Juvenile Research under the same title of \$1,000 for the same purpose. However, in my opinion, such appropriations refer to the traveling expenses of the employes of the department in one case and more particularly in the Bureau of Juvenile Research in the other, and not to the payment of traveling expenses for other individuals. In considering the various appropriation acts enacted by the Legislature, I find that the appropriation under the title of “F-6 for Traveling Expenses” is commonly made to most of the departments and I believe, in such cases, it was clearly the legislative intent that the funds so appropriated be used to defray the traveling expenses of the employes of the department as aforesaid.

On the other hand, I find that in Amended Senate Bill No. 369, supra, there is an appropriation under the title of “F-9—Other” in the amount of \$75.00 for 1938. Inasmuch as this is a general appropriation, I believe your department would be authorized to use this fund for the payment of traveling expenses of a child committed to your care by a

juvenile court for transportation to the state of its (the child's) legal residence. If this fund is not used up at the time a child is committed for transportation to its home state, and in the absence of other circumstances which would tend to make your department unable to accept such a child, I am of the opinion that your department is, in the language of Section 1352-3, supra, "able to do so", referring of course to the acceptance of the child so committed.

In conclusion, therefore, it is my opinion that the Department of Public Welfare must accept, "when able to do so", children committed by a juvenile court under the authority of Section 1639-34, but a lack of available funds to carry on such activity would render the Department of Public Welfare unable "to do so" and, therefore, under such circumstances the Department of Public Welfare is not required to accept children so committed.

Respectfully,

HERBERT S. DUFFY,

*Attorney General*

2390A.

APPROVAL—BONDS, GARFIELD HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$1,000.00, PART OF ISSUE DATED OCTOBER 1, 1933.

COLUMBUS, OHIO, May 2, 1938.

*Retirement Board, State Public School Employes' Retirement System,  
Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Garfield Heights City School  
Dist., Cuyahoga County, Ohio, \$1,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated October 1, 1933. The transcript relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of June 2, 1937, being Opinion No. 679.