

2426

AID TO DEPENDENT CHILDREN LAW—PROVISIONS OF SECTION 1639-47 GC MANDATORY—PAYMENT OF FUNDS UNDER SECTION MADE BY JUVENILE JUDGE—DUTY OF COUNTY TO MAKE PAYMENT IN ACCORDANCE WITH STATUTE—NO EXCEPTION WHERE AID TO DEPENDENT CHILDREN IS CURRENTLY EXTENDED UNDER SECTION 1359-31 ET SEQ., GC.

SYLLABUS:

The provisions of Section 1639-47, General Code, are mandatory and where an order for the payment of funds under the provisions of this section is made by the juvenile judge, it becomes the duty of the county to make payment in accordance therewith without regard to the fact that aid to the dependent children concerned is currently being extended under the provisions of Section 1359-31, et seq., General Code.

Columbus, Ohio, March 30, 1953

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On March 5, 1953, in the Juvenile Court of Knox County, Ohio, a father of four minor children was sentenced to the Columbus Workhouse for one year under Ohio General Code Section 1639-46 for failure or neglect to support his minor children. These same children have been and will continue receiving aid for dependent children from Knox County.

“Ohio General Code Section 1639-47 provides that when an

adult is sentenced under Section 1639-46 the County shall pay fifty cents for each day said prisoner is confined for the maintenance of the dependent children of such prisoner.

"I submit the following two questions for your opinion :

"1. Is the fifty cent provision mandatory in Ohio General Code Section 1639-47?

"2. If the children of such prisoner, who has been sentenced under Ohio General Code Section 1639-47, are receiving ADC from the county from which such prisoner is sentenced, is it mandatory for the county to make additional payment of fifty cents per day under Section 1639-47 of the Ohio General Code?"

Section 1639-47, General Code, to which you refer, reads as follows :

"When an adult is convicted and sentenced to imprisonment in a jail or workhouse for any violation of the provisions of the next preceding section, the county from which such person is so sentenced, on the order of the judge, shall pay from the general revenue fund fifty cents, for each day such prisoner is confined, to the juvenile court of such county, for the maintenance of the dependent children of such prisoner. Such expenditures shall be made under the direction of the judge, who shall designate an employe for such purpose. The county commissioners of such county shall make an appropriation for such cases, and allowances therefrom shall be paid from the county treasury upon the warrant of the county auditor."

In 37 Ohio Jurisprudence, 326, Section 29, it is said :

" 'Must' is a stronger word to indicate an intention that the provision is mandatory than the word 'shall' and it is accordingly so interpreted, except where the intention of the legislature, as gathered from the entire act, appears to be otherwise. But even the use of the word 'shall' is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated * * * ." (Emphasis added.)

In the per curiam opinion in *Railway v. Brescia*, 100 Ohio St., 267, we find the following statement at page 270 :

"The legislature in the wording of these two sections used the verb 'shall' nineteen times and the language is as mandatory as it could select, and it specifically required of the commission that it exercise its judgment as to the competency of each person selected. To hold that the selection of a jury as this jury was selected is a substantial compliance with the law is to nullify its every provision, for if the commission can ignore as many of its

essential provisions as it here ignored, it can ignore them all and inaugurate a system all its own."

The repeated use of the word "shall" in Section 1639-47, supra, would rather clearly indicate the legislative intent that the provisions therein enacted are to be mandatory.

It may be helpful to point out that this apparently mandatory provision was enacted as early as 1908, 99 Ohio Laws, 196 and prior to 1937 was codified in Section 1656, General Code. In 1937 this section was reenacted as Section 1639-47, General Code, in Amended Senate Bill No. 268, 117 Ohio Laws, 520, the title of which act is as follows:

"To revise, consolidate and codify the juvenile laws of the state of Ohio by enacting sections 1639-1 to 1639-60, General Code, inclusive; and to repeal sections 1639 to 1683-1, inclusive, of the General Code of Ohio, relating to minor children."

Prior to this "codification" the General Assembly, in 1936, enacted House Bill No. 610, 116 Ohio Laws, Pt. II, 188, the title of which reads:

"To conform the plan of the State of Ohio for aid to dependent children to the requirements of title IV of the act of congress of the United States, approved August 14, 1935, and known and styled as the 'Social Security Act' in order to obtain the federal aid provided by said act and for such purpose to repeal sections 1683-2 to 1683-10, both inclusive, of the General Code, and to declare an emergency."

This act was codified, by the Attorney General, as Sections 1359-31 to 1359-45, inclusive, General Code, and is commonly known as the "Aid to Dependent Children Law." In general this statute provides for the extension of financial aid to dependent children from funds raised by taxation at the county level and sums made available by appropriation by the General Assembly both from state funds and from federal grants in aid to the state. The plan in general is administered by the state department of public welfare under a "state plan" which is subject to approval of the federal social security board. In short, a comprehensive plan for the support of all dependent children of the state was intended to be established by this act.

It is significant, however, that the legislature in providing for the establishment of such a plan failed to disturb the mandatory provisions of Section 1639-47, supra. It must be presumed, of course, that the

General Assembly legislated in this matter with full knowledge of currently existing statutory provisions on the same subject and the new enactments are thus to be interpreted in *pari materia* with those previously existing. See 37 Ohio Jurisprudence, 594, Section 331. It must be remembered, however, that repeals by implication are not favored and that unless two statutes relating to the same subject are clearly irreconcilable, a repeal by implication will not result. 37 Ohio Jurisprudence, 397, Section 136.

In the instant case there is clearly an inconsistency between the two statutes to the extent that they are mutually duplicate. This inconsistency is by no means irreconcilable, however, and it cannot therefore be supposed to effect a repeal by implication of Section 1639-47, General Code, especially in view of the reenactment of such section after the original enactment of the so-called aid to dependent children law. It may be pointed out, with respect to the duplicative effect just mentioned, that under the provisions of Section 1359-33, General Code, the amount of aid payable in respect to any child is to be determined on the basis of actual need, and it can be anticipated, therefore, that such actual need will be determined with regard to such payments as are made pursuant to Section 1639-47, General Code.

Accordingly, in specific answer to your inquiry, it is my opinion that the provisions of Section 1639-47, General Code, are mandatory and where an order for the payment of funds under the provisions of this section is made by the juvenile judge, it becomes the duty of the county to make payment in accordance therewith without regard to the fact that aid to the dependent children concerned is currently being extended under the provisions of Section 1359-31, et seq., General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General