

6500

1. DEPENDENTS — VIOLATION OF SECTIONS 13008, 13009, 13012 G. C.—IF PERSON IN STATE PENAL OR REFORMATORY INSTITUTION ESCAPES, DEPARTMENT OF PUBLIC WELFARE SHOULD NOT MAKE PAYMENT, FORTY CENTS PER WORKING DAY DURING PERIOD OF ABSENCE DUE TO ESCAPE—SECTION 13019 G. C.
2. PERSON CONVICTED OF NON-SUPPORT OR ABANDONMENT OF CHILD UNDER SIXTEEN YEARS OF AGE—IMPRISONED IN STATE PENAL OR REFORMATORY INSTITUTION — PAYMENT FORTY CENTS PER WORKING DAY SHOULD NOT BE PAID AFTER CHILD IS SIXTEEN YEARS OF AGE.

SYLLABUS:

1. If a person be confined in a penal or reformatory institution of the state because of violation of the provisions of Sections 13008, 13009 or 13012, General Code, and escapes during the period of such confinement, the Department of Public Welfare should not make the payment of forty cents per working day provided for in Section 13019, General Code, during the period such prisoner is absent from the institution due to such escape.

2. If a person be convicted of non-support or abandonment of a child under sixteen years of age and is imprisoned in a state penal or reformatory institution on account thereof, the Department of Public Welfare should not make the payment of forty cents per working day as provided in Section 13019, General Code, after such child arrives at the age of sixteen years.

Columbus, Ohio, November 19, 1943.

Hon. Herbert R. Mooney, Director of Public Welfare,
Columbus, Ohio.

Dear Sir:

Your department has requested my opinion as follows:

“Sections 13008, 13009 and 13012 of the General Code define the offense Neglect to Provide for Minor Child (under 16 years of age) or Pregnant Woman and carry a penalty of imprisonment in a jail or workhouse for not less than six months nor more than one year, or in the Penitentiary not less than one nor more than three years. This offense is commonly referred to as ‘non-support’.

Section 13019 provides that upon imprisonment in the Penitentiary or reformatory—

‘The board of managers of the penitentiary, or reformatory, to which a person is sentenced or confined under this subdivision of this chapter, shall credit such person with forty cents per day for each working day during the period of such confinement, which shall be paid, or caused to be paid, by such board to such trustee.’

We respectfully request your opinion of the following questions:

1. If a person convicted, sentenced to and confined in a state penal or reformatory institution on a charge of non-support or any of the offenses enumerated in Sections 13008 et seq. escapes during the period of his sentence, is the state obligated to make payment of the forty cents per working day during the prisoner’s absence without leave?

2. If the prisoner was convicted of non-support of a minor child, is this chapter of the Code interpreted to mean that payment of the forty cents per day shall cease when the child arrives at the age of sixteen years?”

Sections 13008, 13009 and 13012, General Code, to which you refer, respectively provide:

Section 13008.

“Whoever, being the father, or when charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under sixteen years of age, or the husband of a pregnant woman, living in this state, fails, neglects or refuses to provide such child or such woman with the necessary or proper home, care, food and clothing, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years.”

Section 13009.

“Whoever, being the father of a legitimate child under sixteen years of age, or, being the husband of a pregnant woman, leaves, with intent to abandon, such child or pregnant woman, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years.”

Section 13012.

“Whoever, being the father, or when charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under sixteen years of age, being legally an inmate of a county or district children’s home in this state, neglects or refuses to pay to the trustees of such home, the reasonable cost of keeping such child in such home when able so to do by reason of property, or by labor or earnings, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years.”

These sections are found in Chapter 11 of Title I, Part Fourth of the General Code and in the subdivision of such chapter entitled “Maintenance of minors, etc.” Section 13019, General Code, is correctly quoted in the request, except that the words “sentenced” and “confined” should be joined by the conjunction “and” instead of “or”. This section also is found in the subdivision of Chapter 11 entitled “Maintenance of minors, etc.” The appointment of the trustee, to which reference is made in Section 13019, General Code, is provided for in Sections 13010 and 13013, General Code, and the duties of such trustee are set forth in Section 13016, General Code. In passing, it should perhaps be noted that the powers, duties and functions of the Board of Managers of the Ohio Penitentiary, referred to in Section 13019, General Code, were transferred by Section 1839, General Code, to the Ohio Board of Administration, and later transferred from the Ohio Board of Administration to the Department of Public Welfare by Section 154-57, General Code.

A consideration of your first question at once calls to mind the well established principle of law that any doubt with respect to the authority to expend public money must be resolved in favor of the public and against the legality of the expenditure. *State, ex rel. Bentley, v. Pierce*, 96 O. S., 44. A person who escapes from the Penitentiary is not confined within the Penitentiary either actually or constructively. Section 13019, General Code, authorizes the payment in question only during the period of confinement and does not even purport to provide for payments except during confinement. Such being the case, I am constrained to answer the first question in the negative.

I come now to a consideration of the second question. Section 13010, General Code, provides that if, after conviction for failure to provide for or abandonment of a pregnant woman or a child under sixteen years of age, the defendant appears in court and enters into a bond, conditioned that such person will furnish such child or woman with the necessary and proper home, care, food and clothing, or will pay promptly each week for

such purpose to a trustee named by the court a sum to be fixed by it, sentence may be suspended. Section 13013, General Code, contains similar provisions with respect to a person convicted of neglecting or refusing to pay the trustees of a children's home the reasonable cost of keeping such person's child under sixteen years of age in such home.

Neither Section 13008, 13009 nor 13012, General Code, penalizes the failure to provide for or the abandonment of a child who is not under sixteen years of age. The policy of the subdivision of the chapter with which we are now concerned is to require parents of children under sixteen years of age to support such children and, in the event such parent is imprisoned in the Penitentiary because of such failure to support or abandonment, it is provided that the state shall pay forty cents per day for each working day during the period of confinement, to the trustee.

In construing a statute, the primary purpose is always to give effect to the intention of the legislature. In 37 O. Jur., 662, Section 363, it is said:

"In construing a statute, courts frequently refer to the 'design' thereof, or to that which is 'designed' to be accomplished thereby. When the real design of a legislature, in ordaining a statute, although it is not precisely expressed, is yet plainly perceivable or ascertainable with reasonable certainty, the language of the statute should be given such a construction as will carry that design into effect."

The design of the subdivision of the chapter is to provide for the support of pregnant women, and children under sixteen years of age. It is sought to compel the parents to support such children, but in the event this proves impossible and such parents are imprisoned in a penal or reformatory institution of the state because of refusal so to support, the state pays toward the support. Since the parent himself is under no obligation so far as this subdivision is concerned to support his children after they reach the age of sixteen years, I believe that the state likewise is not required by Section 13019, General Code, to contribute to the support of children after they reach the age of sixteen years.

Any other construction would place a greater burden upon the state than upon the parents. Ohio, at least, has not as yet become socialized to the extent that the duty to support children is regarded as primarily on the state and only secondarily upon parents. A construction of this subdivision which would compel the state to contribute to the support of children over the age of sixteen years would be absurd in view of the fact that related sections of the subdivision place no such obligation upon

the parents. An absurd or unreasonable construction is always to be avoided. See 37 O. Jur., 643, Section 352, where it is said:

“It is to be assumed that the legislature intends to enact only that which is reasonable, and courts sometimes refer to the presumption against absurdity in the provisions of a legislative enactment. It is clear that the general assembly will not be assumed, or presumed, to have intended to enact a law producing unreasonable or absurd consequences.”

In addition, the principle of law considered earlier herein, to the effect that the power to expend public money is always strictly construed and in case of doubt resolved against such power, is also applicable to the second question. For these reasons, I am of the opinion that the second question must be answered in the affirmative.

Respectfully,

THOMAS J. HERBERT,
Attorney General.