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OFFICIAL OPINION NO. 39

June 29, 1950.

Windell W. Fewell, Superintendent,
Indiana Boys' School,
Plainfield, Indiana.

Dear Sir:

I have your request for an Official Opinion on the following questions:

"1. Does a commitment to the Indiana Boys' School result in the boy becoming a ward of this institution?

"2. If the answer to 1, above, is yes, would you define such ward-ship for us? In particular we are interested in learning if our ward-ship would always remove all responsibility and authority from the parents for medical care.

"3. Since the boys mother has residence in the city of Indianapolis would not the boy be eligible for medical care at the Indianapolis General Hospital?

"4. If the boy received treatment at the Medical Center could the Indiana Boys' School have authorized the Medical Center to charge Marion County for his treatment and care?"

In answer to your first question I would like to refer you to State v. White Circuit Court (1948), 225 Ind. 602, 77 N. E. (2d), in which the court said:

"The history of juvenile jurisdiction reveals that the state assumed this authority as *parens patriae* for the welfare of all infants. 11 C. J., page 285; 14 C. J. S., Chancellor, page 393.

" 'Under the ancient common law, the king, as *parens patriae*, was deemed to have charge of all persons who, by reason of heir youth and inexperience, were unable to care for themselves, or to protect their estates. In the exercise of this supervision, the chancellor, who was originally an ecclesiastic, and the keeper of the king's conscience, was the guardian of all infants. 9

Enc. Pl. & Prac. 890; Black, Law Dict. tit. "Chancellor"; 1 Chit. Bl. *462, note 8; 2 Story, Eq. Jur. § 1332.' Butterick v. Richardson, 1901, 39 Or. 246, 64 P. 390, 391.

"The State of Indiana acting by its General Assembly, has continued and extended this jurisdiction under the various juvenile acts.

"The power conferred upon the juvenile court under this act is of the same character as the jurisdiction exercised by courts of chancery over the person and property of infants, and flows from the general power and duty of the state *parens patriae* to protect those who have no other lawful protector.' Dinson v. Drosta, 1907, 39 Ind. App. 432, 434, 80 N. E. 32, 33. This case correctly held that in view of the equitable nature of the proceedings, the juvenile delinquent was not entitled to a trial by jury."

In 1948 the Attorney General was called upon to give his opinion concerning transfers from the Indiana Boys' School. In 1948 O. A. G. 431, 433, he said:

"The Appellate Court has also held in the case of Dinson v. Drosta (1907), 39 Ind. App. 432, at page 434, in speaking of proceedings before a Juvenile Court that such 'is not a criminal action.' The defendant was not entitled to a trial by jury and the judgment does not attach a stigma to her, and that:

"The power conferred upon the juvenile court under this act is of the same character as the jurisdiction exercised by courts of chancery over the person and property of infants, and flows from the general power and duty of the state *parens patriae* to protect those who have no other lawful protector.'"

And in 1946 the Attorney General in considering the question of extradition of escapees from the Boys' School said as follows:

"Under the provisions of the Juvenile Act, however, when a child is committed to the Boys' or Girls' School,

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said child becomes a ward of the State. Under our law, the guardian ever after his appointment is entitled to the child's custody as against any other person, until, of course, it is made to appear that he is unfit to be entrusted with his or her custody. This has been the holding of the courts to this State from the earliest days of its jurisdiction."

From these authorities I believe that it becomes apparent that a boy once committed to the Indiana Boys' School becomes a ward of that institution.

In answer to your second question in the case of Bradburn v. Bradburn (1935), 209 Ind. 61, 197 N. E. 905, 907, the Court said in regard to custody:

"Since the juvenile court had jurisdiction of the subject-matter, and of the child, and of its parents, its judgment is not void, nor are we clear that it is erroneous merely for the reason that the child was returned to the home in which it had been living. Some one might have been caring for the child without the legal right to its custody, and, because it was neglected by its parents or legal guardian, whose duty it was to care for it, the order making the child a ward of the court, and placing it in the custody of the same person, created a legal right to a custody that was unenforceable before. * * *"

And in 1947 in dealing with the question of expenses for the education of a girl under the wardship of the Girls' School the Attorney General said in 1947 O. A. G. 315, 319:

"In construing similar statutes applicable to a boy in a private home on placement from the Indiana Boys' School, it was held in an official opinion of this office, being Official Opinion No. 28 of 1946, that said boys' on placement were public wards of the Boys' School and that the relationship of guardian and ward prevailed between such institution and such child on placement. The same relationship results under the above statutes from a placement of a girl in a private home by the trustees of the Indiana Girls' School for the reason they are committed solely to the custody of

such board of trustees, for confinement at such institution or at such other place which may be designated by said board of trustees. In this connection, it is pointed out in such official opinion that the juvenile court does not retain jurisdiction of a child committed to a correctional or other state institution under the provisions of Section 7, Chapter 336 of the Acts of 1945, same being Section 9-3204, Burns' 1945 Supp.

“Since such girls are committed to the custody of this board of trustees of the Indiana Girls' School to be confined at the institution, or at such other place designated by said board of trustees, I am of the opinion they would still be considered ‘inmates’ of the Girls' School while on placement in such private homes, within the meaning of the word ‘inmate’ as used in Section 13-707, Burns' 1942 Repl., *supra*.

Wright v. Mary Calloway Home for Aged Women (1939), 186 Miss. 197, 208, 187 So. 752, 755;

In re Seidel (1939), 204 Minn. 357, 362, 283 N. W. 742;

Boyd v. Howard, Warden (1946), 224 Ind. 439, 68 N. E. (2d) 652, 654.

“It is, therefore, clear that a girl committed to the Indiana Girls' School is a public ward of said institution until she is twenty years of age unless discharged by said board of trustees pursuant to law. It is further apparent that under the order of commitment, the county from which said commitment is made is required to pay one-half of the estimated cost of keeping said child under said commitment, and under Section 52-1410a, Burns' 1945 Supp., *supra*, the same is payable from the county general fund.”

The reasoning expressed in the last quoted opinion is directly applicable to the Boys' School. On the basis of this authority it is my belief that parents lose all responsibility for medical aid for so long as the boy is a ward of the State. Your wardship would include the duty to furnish all necessities of life to your wards.

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In answer to your third question, Burns' 52-1135, *infra*, makes the committing county responsible for payment of costs, therefore, the residence of the boy's mother would not be determinative of his rights to medical treatment.

In answer to your fourth question, Section 12, Chapter 18 of the Acts of 1883, same being Burns' Section 13-926 provides:

"Said board of control (board of trustees) shall estimate and determine, as near as may be, the actual expense per annum of keeping and taking care of each boy committed to said institution, not including the use of the grounds and buildings, and shall include a statement of such cost in each annual report. One-half of the cost of keeping each boy, according to such estimate, together with the entire cost of conveying each boy to the institution, shall be paid by the county from which said boy may be committed. The expense which any county may be liable to pay on account of any boy committed to said institution, under the provisions of this act, shall be paid by the treasurer of said county into the state treasury, on a certified and detailed statement as to the amount due therefor from such county being furnished to the treasurer of state by the superintendent of said institution, and in no case shall the amount charged to any county for the keeping of any boy to exceed one-half the estimated cost of his support as fixed by the board of control (board of trustees) as above provided."

There is another statute concerning medical care and the payment which deals with this problem. Section 4 of Chapter 300 of the Acts of 1947, same being Burns 52-1134, reads as follows:

"Any person who is an inmate of any penal, benevolent or correctional institution of the state of Indiana, and is found to be in need of medical, surgical or hospital care which cannot be provided by the institution, may be placed in any state owned or operated hospital or other public hospital for necessary medical, surgical or hospital care on written order of the superintendent

or warden of the state institution wherein said inmate is confined, provided that such inmate shall not be placed in a public hospital other than a state owned or operated hospital unless the daily charge for hospitalization at such public hospital shall be less than that charged by the state owned or operated hospital."

Section 5 of that same Act found in Burns Section 52-1135, provides for the procedure of paying costs and expenses. It provides in part as follows:

"* * *

"(b) The necessary costs and expenses which may be incurred upon the placing of an inmate of an institution in a hospital shall be paid out of the county general fund of the county from which such inmate was committed. A certified and itemized statement of the cost of treatment shall be rendered to the penal, benevolent or correctional institution from which the inmate has been placed. If the superintendent or warden of said institution shall find that said certified and itemized statement of the cost of treatment be proper, a copy of such statement, together with a copy of the order authorizing such care, shall be sent by the proper official of such institution to the auditor of the county from which the inmate was committed to the penal, benevolent or correctional institution, and the entire cost of such treatment shall be paid by the county. No charges for medical, surgical or hospital care of inmates shall be paid out of county funds for any subsequent medical, surgical or hospital care unless a new written order is issued by the superintendent or warden of the penal, benevolent or correctional institution wherein said inmate is confined."

On the basis of these statutes it is clear that if Chapter 300 of the Acts of 1947 is complied with, the total cost may be charged back to the county and otherwise since it is clear that expenses for medical treatment would form a part of the cost of caring for the boy, half of the cost could be charged back to the county. In certain cases the county may be reimbursed for this cost from the parents, if the original de-

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termination by the court so provides. See Burns Section 9-3218, same being Acts of 1945, Chapter 356, Section 18.

OFFICIAL OPINION NO. 40

July 7, 1950.

Clinton Green, Director,
Department of Veterans Affairs,
431 North Meridian Street,
Indianapolis, Indiana.

Dear Sir:

This is in reply to your letter in which you state the following:

"We are requesting an official opinion in regard to the exemption from taxes in the State of Indiana on certain dwellings, which were purchased by paralyzed veterans with the assistance of the Veterans Administration.

"Under Public Law 702 of the 80th Congress, enacted on June 19, 1948, the Veterans Administration was authorized to assist certain paralyzed veterans in acquiring dwellings that are suitable to their particular requirements. Grants were authorized in the aforementioned Act for a maximum purchase price of \$10,000, and the Veterans Administration paid up to 50 percent of the cost of these homes.

"QUESTION No. 1: Are these dwellings, so purchased, exempt from total taxation in the State of Indiana?

"QUESTION No. 2: Under the above cited Federal Act, the National Government pays 50 percent of the total cost of a suitable dwelling. Should that 50 percent be deducted from the assessed valuation of the home, and taxes paid by the veteran on the balance?"

Public Law 702 contains no specific exemption so if their be immunity or exemption from local taxation same must be