

OFFICIAL OPINION NO. 28

March 28, 1946.

Hon. Albert H. Jessup, Superintendent,
Indiana Boys' School,
Plainfield, Indiana.

Dear Mr. Jessup:

I have before me your letter requesting an official opinion which in substance asks the following question:

Where a boy has been made a ward of the county department of public welfare, and is thereafter committed to the Indiana Boys' School, and is later placed in a home on trial in a county other than the county from which he was committed, is the welfare department of the county from which he was committed, and in whose custody he was prior to his commitment, required or authorized to pay for the support and expenses of said boy while he is on placement in such home in another county?

Section 13-910 of Burns', 1942 Replacement, provides in part as follows:

"Whenever said institution shall have been so far completed as to properly admit of the reception of youths therein, the governor shall make due proclamation of that fact; and, thereafter, it shall be lawful for said board of commissioners to receive into its *care* and *guardianship* infants between the ages of seven (7) and eighteen (18) years, committed to its custody * * *." (Our emphasis.)

Also, Section 13-914 of Burns', 1942 Replacement, provides in part as follows:

"If any boy over the age of ten (10) years, and under the age of seventeen (17) years be arraigned for trial in any court having criminal jurisdiction, on a charge of any violation of any criminal law of this state, or if a complaint in writing, setting out the acts of such boy has been filed, which complaint shall

be sworn to and due proof shall be made in open court in the presence of such boy that he is a proper subject for the *guardianship* of such institution in consequence of the incorrigible or vicious conduct, the court or jury trying the same may commit said boy to this institution instead of the jail of the county or state's prison; and the judge may, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit the accused to the guardianship of said institution; provided, That no commitment shall be for a shorter period than until the boy shall attain the age of twenty-one (21) years. * * *” (Our emphasis.)

Section 13-915 of Burns', 1942 Replacement, states in part:

“Hereafter, no boy under the age of sixteen (16) years, if convicted of crime, shall be sentenced to the Indiana Boys' School, but, following such conviction, the judge shall sentence such boy to the *custody* of the board of managers (board of trustees) of the Indiana Boys' School, to be confined by it at that institution or at such other place as may be designated by said board of managers (board of trustees) where he can be most faithfully and properly cared for, as guilty of crime found in such finding or verdict, and that he shall be confined therein until he reaches the age of twenty-one (21) years, unless sooner released by said board of managers (board of trustees). * * *” (Our Emphasis.)

Section 13-921 of Burns' 1942 Replacement provides the manner in which a boy may be placed on trial by the Boys' School:

“The board of control (board of trustees) may, by general rules, provide that boys, for whatever cause committed, may at any time, be discharged or released on trial; but in all cases where a boy is released on trial, he must, at stated intervals, report his conduct

to the superintendent, and present certificates of good behavior, whereupon his leave may be extended. It shall be the duty of the superintendent to recall any boy who may not be conducting himself properly, or any boy who may not have a suitable home."

Section 13-923 of Burns' 1942 Replacement provides the manner in which a boy may be discharged, as follows:

"The board of control (board of trustees) of the Indiana Boys' School is hereby authorized, in its discretion, to discharge any boy who has been committed to such institution for instruction or correction, when such boy shall have attained the age of eighteen (18) years."

From the foregoing statutes it is quite clear that prior to the 1945 Acts it was the intent of the Legislature that where a boy was committed to the Boys' School he became the ward of such school which had complete control over him until he reached 21 years of age, unless he was sooner discharged by the board of trustees of such school.

Section 7 of Chapter 356 of the Acts of 1945, same being Section 9-3207 of Burns' 1942 Replacement (Pocket Supp.), provides in part as follows:

"When jurisdiction shall have been obtained by the 'court' in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one (21) years of age unless discharged prior thereto or is committed to a correctional or other state institution. * * *"

By Section 15 of Chapter 356 of the Acts of 1945, same being Section 9-3214 of Burns' 1942 Replacement (Pocket Supp.), a Juvenile Court may enter one of several orders. It may (1) place the child on probation or under supervision in his own home or in the custody of a relative or other fit person; (2) commit the child to any suitable public institution or agency; (3) make the child a ward of the court, a ward of the Department of Public Welfare of the county, or a ward of any licensed child-placing agency; or make any

other disposition of the case necessary to the best interests of the child.

Section 16 of Chapter 356 of the Acts of 1945, same being Section 9-3216 of Burns' 1942 Replacement (Pocket Supp.), provides that an order or commitment made by the court in the case of a child shall be subject to modification or revocation from time to time. It further provides that a parent, guardian or next friend of the child who has been committed by the court to an institution, agency or person may file his verified petition asking that the child be restored to the custody of its parent or guardian. It is expressly provided, however, in this section that any child committed to any state institution shall be committed until said child attains the age of 21 years or is sooner released by the board of control of such institution.

From the foregoing sections of the 1945 Acts it is quite apparent that once the Juvenile Court commits a boy to the Indiana Boys' School, such commitment lasts until the boy is 21 years of age unless he is sooner discharged by the Boys' School. Once the boy is committed to the Boys' School, neither the court nor any other person or agency has further jurisdiction over him, and he is completely within the jurisdiction and control of the board of trustees of the Indiana Boys' School.

In connection with the matter of who is to pay the expenses of a boy who has been committed to the Boys' School while he is in such school or on placement or parole, the following statutes are pertinent. Section 13-926 of Burns' 1942 Replacement provides as follows:

"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 building, 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 exceed one-half the estimated cost of his support as fixed by the board of control (board of trustees) as above provided."

Also, Section 19, Chapter 356, Acts of 1945, same being Section 9-3219 of Burns' 1942 Replacement (Pocket Supp.) provides as follows:

"When found by the court to be advisable compensations shall be allowed for the care of any child made a ward by order of the court or for any child coming within the provisions of this act (Sections 9-3201—9-3224) and placed by order of the court with any custodial agency or institution, and where the expense for the care and maintenance of such child is not otherwise provided by law, shall not exceed the sum of one dollar (\$1.00) per day for any child, except that by order of the court an additional allowance may be made for unusual expense in connection with the care of such child when such expenses are not included in the ordinary care and support of such child. All such compensation and allowance shall be a proper charge against the county and money to pay such compensation and allowances shall be provided for by the county council in the proper fund."

Under the first statute, above set forth, a county is required to pay out of its general fund one-half of the expenses of the upkeep for such boy to the institution. The 1945 Act, above quoted, again recites this same proposition that the cost for the care and maintenance of the child of a custodial institution is to be paid for by the county council out of the proper fund of the county from which a boy is committed.

Under the Public Welfare Law it is provided that the county welfare department may award benefits to dependent

and destitute children. Section 52-1267 of Burns' 1933 (Pocket Supp.) defines the term "destitute child" as including a needy child *not a public ward*. Under this exclusion a ward of the Indiana Boys' School, being a public ward, could not qualify for assistance as a destitute child. Under Section 52-1240 of Burns' 1933 (Pocket Supp.) the county welfare department may award assistance to dependent children. However, under the definition of the term "dependent child", contained in Section 52-1001 of Burns' 1933 (Pocket Supp.), a boy who is a ward of the Boys' School could not qualify for such assistance.

Section 52-1410A of Burns' 1933 (Pocket Supp.) provides as follows:

"That part of the care and maintenance of the inmates of the Indiana State Sanatorium, Indiana Boys' School and the Indiana Girls' School which, under the provisions of the laws of this state, is to be charged back to the several counties of the state, shall be paid from the county general fund and not the county welfare fund, unless otherwise provided by law."

From these sections of the Public Welfare Law it is evident that the county welfare department could not award assistance to a ward of the Boys' School whether he be actually in the school or on placement or parole, for he is no longer a ward of the court or of the county department of public welfare, but is solely a public ward of the Boys' School.

Based upon the foregoing statutes it is my opinion that when a boy is on placement or parole from the Indiana Boys' School, the county welfare department of the county from which the boy was committed is not required or authorized to pay the expenses or support of the boy, but such expenses and support are to be paid by the county from which the boy was committed and the Boys' School, each paying one-half of such expenses.