

State Orphans' Home, What Children Entitled to Admission to.

Children may be admitted to the Orphans' Home pursuant to the various sections mentioned in the following opinion.

Helena, Mont., July 1, 1909.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of June 21st, requesting opinion as to the circumstances and conditions under which children may be admitted to the State Orphan's Home at Twin Bridges.

Sec. 1250 of the revised codes provides that every orphan, foundling, or destitute child, under twelve years of age, of sound mind and body shall be entitled to be received into said home at the expense of the state. Children over twelve years of age and under sixteen years of age and children with slight physical defects may be admitted to the home, if deemed advisable by the board of trustees.

The admission of children provided for in said section 1250 is made pursuant to the provisions of Sec. 1277 of the revised codes, which provides that application for the admission of such a child must first be made by the county superintendent of schools who shall make a full and complete investigation and report the same to the board of county commissioners, whereupon the board of county commissioners shall make application to the trustees, accompanying the same with the report of the county superintendent. Another method providing for the admission of children is found in section 1278, which provides that whenever in any divorce proceedings the district court shall deem the parents improper persons to have the care and custody and control of the children, or when-

ever the abuse of parental authority shall be established by an action brought for that purpose, the court may order the child committed to the Orphans' Home. In addition to the above provisions, section 1668, defining the duties of the secretary of the bureau of child and animal protection, provides that under certain circumstances he may take possession of any child under eighteen years of age and hold him at the expense of the county in which he resides until a judicial inquiry can be made as to his condition by the courts of the said county and that such child shall be disposed of by the court according to said laws relating to minor children.

Section 7829 defines what are dependent and neglected children. Section 7831 provides that any officer of the state bureau of child and animal protection, or any person who is a resident of the county who has knowledge of a child in such county who appears to be a dependent or neglected child, may file with the district court a petition in writing, and section 7832 provides that upon the filing of such petition the judge of such court shall issue a citation fixing the day and time of hearing of such petition. Section 3874 provides that upon the hearing of any such petition, if the said child shall be found to come within any of the provisions of said section 7829, which defines dependent and neglected children, that the court may enter an order committing such child to the State Orphans Home, and if said home is unable to receive said child, or if from any other reason it shall appear to the best interest of said child, the court may make such disposition of it as seems best for its moral and physical welfare.

You will notice that in all the above laws the child must first be taken before a court except in the cases where the application is made through the county superintendent of school and the board of county commissioners, and the law relating to dependent and neglected children does not appear to repeal the provisions of section 1250 where the child is over twelve years of age or where it has slight physical defects. In such cases it appears to be in the discretion of the board of trustees as to whether such children shall be admitted or not.

In addition to the above sections, your attention is also called to section 1279, which provides that any child, after it has reached the age of sixteen years, may be discharged by the board of trustees and returned to the county from whence it came. Also to section 3764 and to section 3772, as amended by chapter 12, laws of 1909, which provide the conditions under which the board of trustees may consent to the adoption of a child admitted to the home.

Your attention is also called to section 9430, revised codes, relating to the commitment of delinquent children, which provides that the court may commit such children to the State Reform School or to any institution within the state incorporated under the laws of this state that may care for children, or which may be provided by the state or county suitable for the care of such children.

However, in our opinion such children could only be committed to the Orphans' Home upon the conditions provided in section 1250.

The above laws are all that we find relating to the admission of children to the State Orphans' Home.

Very truly yours,

ALBERT J. GALEN,

Attorney General.