

State Orphan's Home, Right to Require Contribution from Parents of Children. State Orphans' Home, When May Give Children in Adoption. Children in State Orphans' Home, When May Be Adopted.

When the court committing children to the Orphans' Home on account of abuse of parental authority orders the parent to pay such sum of money as, under their circumstances, shall be just for the maintenance of the child, they may be required to do so or be punished for contempt; but where a child is otherwise committed to the home as an orphan, foundling or destitute child, the home cannot compel the parents to pay for its support, but, in the event they fail to contribute such amounts as they may be able to, the child may, after the expiration of one year be given in adoption by the home.

Where the parents of children maintained in the orphans' home have wilfully abandoned the child, or caused it to be maintained in the orphans' home for one year without contributing to its support, or if the child is a half orphan and is kept and maintained in the home for one year or over and the parent has not paid towards the expense of maintaining the child at least sixty per cent of the cost of keeping it, if able to do so, the child may be given in adoption without the consent of the parents.

May 11, 1911.

Mr. Percy Witmer, Clerk.
State Board of Examiners,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of April 17th, enclosing a communi-

cation from Mr. George B. Conway, state accountant, with respect to the state orphan's home, requesting my opinion upon the following questions:

"1. Some parents are able to pay something towards the support of their children in the state orphan's home and in limited amounts are doing so. To what extent is the home now authorized to require this?

"2. The law provides that children whose parents do not so contribute toward their support for one year may be given away for adoption. Some parents have set up the claim that officers of the bureau of child and animal protection have advised them that their children might remain at the home for one year without pay and that they might then begin such payments and the children would be held subject to reclamation for a year thereafter. Is this correct?"

In answer to your first question, you are advised that where the child is committed to the home under the provisions of Section 1278, Revised Codes of 1907, providing that whenever in divorce proceedings the district court shall deem the parents improper persons to have the care, custody or control of the children of the marriage, or whenever an abuse of parental authority is established by an action brought for that purpose—the court may order the child or children committed to the state orphan's home, and may order the parents to pay such sum or sums of money as under their circumstances shall be just. It is required that such payment shall be paid monthly to the state to defray the expenses of such child or children in the home. When the court has made such order requiring the parents to pay a certain sum to defray the expenses of the child at the home, if the parents are able to do so, and fail or refuse to comply with the order of the court they may be required to make the payment or be punished for contempt of court.

But where the child is otherwise admitted to the home as an orphan, foundling or destitute child, the home cannot compel the parents to pay for its support, but in the event they fail to contribute such amounts as they may be able to towards the support and maintenance of the child in the home, the child may after the expiration of one year be given in adoption by the home. (Sec. 3764, Rev. Codes).

Replying to your second question, you are advised that the officers of the bureau of child and animal protection have no authority to advise parents that their children might remain in the home for one year without pay and that they might then begin contributions to their support without subjecting the children to be given in adoption. If the parents have wilfully abandoned the child or caused the same to be maintained in the orphan's home for one year without contributing to its support; or if the child is a half orphan and is kept and maintained in the home for one year or over and the parent has not paid toward the expense of the maintenance of the child at least 60 per cent of the legitimate cost of keeping and maintaining the child, if able to do so, the child may be given in adoption without the consent of the parents.

This opinion would have been rendered to you before this, but for the pressure of other work.

Yours very truly,

ALBERT J. GALEN,

Attorney General.