

**Orphans' Home. Cost of Transportation of Children To.**

The expense of transporting destitute children to the Orphans' Home is a county, rather than a state, expense.

Helena, Mont., August 23, 1906.

O. B. O'Bannon, Esq., County Attorney, Deer Lodge, Mont.

Dear Sir: I am in receipt of your favor of the 16th instant, making request for opinion of my office upon the following question:

"Is the cost of transporting children to the State Orphans' Home a state or a county charge?"

Section 2471, as amended by Chapter XIL, Laws of 1903, page 58, 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," etc.

In determining the question of whether the cost of transporting children to the Orphans' Home is a state or a county charge, it is necessary only to consider and construe the meaning and legislative intent of the statutory words "shall be entitled to be received into said home at the expense of the state." Whilst, generally, the word "received" relates to a past occurrence or condition, still as used in this statute in connection with other words denoting a present condition, it, in my opinion, relates to a present condition, and such condition arises at the time children of the character described in the statute are presented at the home.

The statute simply means that at the time children of the character named in the statute are brought to the home, they will be received into the home without any cost, charge or expense whatsoever to anybody other than the state. The law merely declares that the doors of the home will be open without charge or expense to children of the character designated by the statute.

The cost of transporting such children to the home is, therefore, not a proper charge against the state. Nor is it a proper charge against the county in cases where the child or its parents have sufficient means

or estate to pay such expenses, but in cases of destitute orphan children having no estate, it would be a proper charge to be audited and allowed by the Board of County Commissioners and paid from the county treasury

In consideration of this subject, it may be well to keep in mind that no children are admitted into the home except upon application, first properly filed with the Board of Trustees of the Orphans' Home by the Board of County Commissioners of the County. (Section 2497, Political Code, as amended by Chapter XI., Laws 1903.)

Thus the state relieves the county of its duty and expense of caring for such children upon application of the Board of County Commissioners, and certainly the Board should not expect the state to pay the expense of its destitute wards at any time prior to their delivery to the state institution, and the law is not susceptible of any construction which would warrant or authorize the payment of such expense by the state.

Respectfully Submitted,

ALBERT J. GALEN,  
Attorney General.