

Children, Maintenance Of in State Orphans Home. State Orphans Home, Maintenance of Children In. Parents, Duty to Support Children in Orphans Home.

Children confined in the state orphans home are maintained at the expense of the state. There is no legal obligation on the part of the parents of such child to contribute to its support.

July 22, 1912.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I acknowledge receipt of your communication of the 15th inst., with which you submit report of Mr. Geo. B. Conway, State Accountant, dateu July 6th, with reference to inmates of the State Orphans Home whose parents, or one of the parents of whom, are living and able to support the inmate, and you ask whether steps may be taken to compel the parents to contribute towards the support of such children, and to the propriety of the presentation of the matter as a subject for future legislative action.

The matter of the admission of children to the State Orphans Home was quite exhaustively considered in an opinion of this Department under date of July 1, 1909, addressed to your board (Vol. 3, Opinions Attorney General, page 149). In that opinion we outlined the various conditions under which a child might be admitted to the State Orphans Home. The provisions of law relative to this Home outlines three methods by which children may be admitted.

(1) Upon application of the County Superintendent of Schools and the Board of County Commissioners;

(2) By an Order of the District Court in a divorce proceeding;

(3) By an Order of the District Court committing delinquent children;

but there is no provision of law by which parents of a child legally committed to the State Orphans Home are required to contribute in any amount to the support of such child. Upon the admission of the child to the Home the expense of maintenance is a State charge.

By reference to the provisions of Sec. 3764, Revised Codes, it is apparent that the legislature did not contemplate an enforced payment of cost of maintenance by the parent. Provision is made in this section for the adoption of the inmates of the Orphans Home and provides that the child may be adopted where a parent has wilfully abandoned the child or has caused him to be maintained in any public orphan asylum for one year without contributing to the support of such child. And further that in the case of a half orphan the same might be adopted from the Home with the consent of the majority of the board of trustees of the Home and without the consent of the parent unless such parent has paid toward the expenses of maintenance of such half orphan at least 60 per cent of the legitimate cost of keeping and maintaining such child during the said time, if able to do so. This section prescribes the only penalty I am able to find for failure on the part of a parent to contribute to the support of the child while an inmate of the Orphans Home, namely, that the parent thereby forfeits his right to the child and the same may be adopted by a majority of the board of trustees.

It is my opinion that this state of affairs as shown to exist by the report of Mr. Conway is a proper subject for legislative action and

that the same should be called to the attention of the legislature in the proper manner to the end that legislation may be enacted compelling parents who are financially able to do so to pay the necessary expenses of maintenance of such child while an inmate of the Orphans Home.

I return herewith the report of Mr. Conway.

Yours very truly,

ALBERT J. GALEN,

Attorney General.