

Commitment — District Court — Children — Orphans — Adoption—State Orphans' Home.

The court has not exceeded its jurisdiction in committing children to the Orphans' Home "until further order of this court" and some modification of this order will be necessary before such children may be adopted.

Where the commitment contains a finding that the parents are unable to contribute such sum to its support, the child would be in the same situation with reference to adoption as one whose parents contributed 60% of the expense for care and maintenance.

H. W. George, Esq.,
President State Orphans' Home,
Twin Bridges, Montana.

My dear Mr. George:

You have submitted to this office several questions with regard to commitments of children to the State Orphans' Home.

First: You ask whether the Court has jurisdiction to insert a provision in the order of commitment limiting the custody of the institution over the child "until further order of the Court herein," and, if

the children have been cared for at the expense of the state for one year, whether the Judge has any jurisdiction over the case, provided no payments have been made by the parents in accordance with the law, which states that, unless 60 per cent of the cost of keeping and caring for said children is paid the state, said children are subject to adoption.

This office has heretofore passed on the right of the Court to retain jurisdiction over children committed to the Orphans' Home in connection with divorce proceedings so as to make a valid order preventing the placing of such children by adoption. This opinion is found in Vol. 9, Opinions of Attorney General, at page 389.

It will be observed that in the copies of commitment which you enclosed the Court, in the instant case, made a finding that the parents were financially unable to contribute to their support and maintenance. In a proceeding before the Court directed to the determination of the fact with reference to the neglect or abandonment of the children, the determination of the financial ability of the parents to properly care for the children would be a question of primary importance, and a finding by the Court that the parents are not financially able to contribute to their support would preclude the adoption of the children until such time as the order was modified in this particular. Such a finding, in effect, places the child in the same position as a child whose parents contributed 60 per cent of the expense mentioned in Section 5859, Revised Codes of 1921, and places it beyond the power of the Board to adopt such child, while such an order remains in effect, without the parents' consent.

It is, therefore, my opinion that where a commitment contains a reservation such as "until the further order of the Court," or "shall not be legally adopted by any person or institution," the Court has not exceeded its jurisdiction, but that some modification of the order will first be necessary before the Board will be vested with authority to adopt the child out, on the failure of the parents to pay, at least, 60 per cent of the cost of maintenance, and that, where the commitment contains a finding that the parents are unable to contribute such sum to its support, the child is in the same situation with reference to adoption as one whose parents contributed 60 per cent of the expense for care and maintenance.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.