

**Opinion No. 106.**

**Montana State Training School—  
Voluntary Admission—Board of Public  
Welfare, hearing and commitment**

Held: 1. The county board of public welfare has the authority to conduct hearing on voluntary application for admission to Montana State Training School made by parents, or with their consent, and may make order requiring payments for maintenance of child.

2. The provisions of Chapter 183, Laws of 1943, authorizing the county board of public welfare to examine parents as to their financial ability and to make an order requiring payment for support and maintenance of the child is regulatory measure, and as such not unconstitutional.

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August 13, 1943.

Mr. J. B. Convery, Administrator  
State Department of Public Welfare  
State Capitol  
Helena, Montana

Dear Mr. Convery:

You have submitted the question whether the provisions of Chapter 183, Laws of 1943, insofar as they relate to voluntary admissions of children at the Montana State Training School at Boulder, requiring the filing of such applications with the county department of public welfare and the board of public welfare holding a hearing for the determination of the ability of the parent or parents to pay or contribute to the maintenance, care and support of such child while attending such school, and the making of an order requiring such payments or contributions, is mandatory in such cases that the application be filed with the county board of public welfare. You further inquire whether the procedure in cases of voluntary admission before the county board of public welfare is a constitutional enactment of our state legislature.

Section 7 of the act provides that, if such application for the admission to the school is made by the parents, or if by one parent and the other is dead or absent from the state, or if the application is made by another and the approval and consent of such parent or parents to the person named in the application being placed in such school, then such application "shall be made to and filed with the County Public Welfare Board of the county in which such person resides." The same section further provides that if the application is not made by the parents or parent and such approval and consent has not been endorsed on the application, then such application must be filed in the District Court of the county in which the applicant resides.

As to voluntary admissions, where the application is made by the parent with the endorsed approval and consent of the parent or parents on the application, the language of the act is clear and unambiguous to the effect the application must be filed with the county board of public welfare. It is my opinion this provision as to the cases to which it applies is mandatory.

Section 9 of the act provides that, when the application is filed with the county board of public welfare, after investigation and reports as required by the act, and the superintendent of the school advises the board accomo-

datations may be provided therein and the board determines the applicant is a proper person to be placed in such training school, then if it appears to the board the person named in said application has means, money or property out of which the cost of his transportation, care, maintenance, clothing and other necessary personal expenses in the school or some part thereof, could be paid, or that he has parents or other relatives legally liable for his support and maintenance who are financially able to pay for such transportation, care, maintenance and clothing and other necessary personal expenses while in school, the board then is directed to make an order requiring the person or persons having the property or the parent or relatives liable for the support of such child and is directed to order such person having money or property or means or the financial ability to pay for the above named items, including transportation to appear before the board and testify. After the hearing of such testimony the board is directed to fix and determine the amount, if any, to be paid for such transportation, maintenance, care, clothing and other necessary expenses out of the money or means that it has on hand, or to direct parents who are legally liable for his support and maintenance to pay an amount not exceeding fifty cents (50c) per day for the above named expenditures.

It has been suggested the provision for a hearing and determination of the ability to pay the county board of public welfare amounts to vesting this board with judicial powers and functions and therefore the act as to this class of cases is violative of Section 1 of Article IV of the State Constitution.

This section divides the powers of governments into three distinct departments, namely, the legislative, executive and judicial. It prohibits the exercise of powers properly belonging to one of these departments by a person or collection of persons charged with the exercise of powers properly belonging to either of the other departments except as in the Constitution expressly directed or permitted.

The board of public welfare is a branch of the executive department of the government. Courts belong to the judicial department; and when it is sought to determine the existence of a

right or deprive one of the citizens of a right or property, that is ordinarily a function of the judicial department. (State ex rel. Public Service Commission v. District Court, 107 Mont. 240, 84 Pac. (2nd) 325.)

The departments of government are not entirely independent one from another, and the separation of government into departments does not mean there shall be no common link or connection or dependence of one upon another in the slightest degree. The protection of the judicial department from encroachment is not to be sought in extravagant pretensions to power, but rather in a firm maintenance of its own clear authority coupled with a frank and cheerful concession of the rights of the co-ordinate departments. (State ex rel. Hillis v. Sullivan, 48 Mont. 320, 137 Pac. 392.)

This constitutional provision does not prevent the legislature from vesting in administrative executive boards the power and authority to enforce regulatory measures. (Fulmer v. Board of Railway Commissioners, 96 Mont. 22, 28 Pac. 849.)

Insofar as parents of children are concerned, the parent is entitled to the custody of a child and must give him support and education suitable to his circumstances. (Section 5833, Revised Codes of Montana, 1935.) The obligation declared by this statute is but a statement of a common law principle long recognized.

When the parent either by the filing of an application or endorsing and approving the same seeking the admission of his child to the institution in question, he is but performing an obligation imposed upon him by statutory law. The provision authorizing the board to examine the parent as to his financial ability and to make an order after hearing as to the amount the parent shall contribute to the support and maintenance of his child is a regulatory measure with reference to the admission of children into the training school, and when the parent makes the application or endorses it or approves it he in fact consents to the application of this regulatory measure. As to these provisions with reference to cases of voluntary admission to the school, where the parent consents to the placement of the child in the school, there is in such instances no deprivation of any right involuntarily

and therefore no violation of the provision of the Constitution, and as to such cases the act is constitutional.

But in Section 9 we find the provision that, where some other person other than the parent has property belonging to the child in his possession, the board of public welfare is authorized to issue a like order to show cause against such person, who after hearing his testimony may be ordered to pay from such money, means or property for the support of the child. Such a person who is ordered to pay has not necessarily consented to the action of the board, and while the board in entering the order would be exercising functions judicial in character, it is not vested with judicial power in the sense in which that expression is used in the Constitution. The expression "judicial power" means the power of the court to decide and pronounce judgment and carry it into effect between persons and parties who bring an action before it for decision. The board is like the workmen's compensation board—it has the power to hear evidence but it is after all an administrative body. It is without power to render an enforceable judgment, and its determinations and awards are not enforceable by execution or other process. Such was the reasoning of the Supreme Court in sustaining the Workmen's Compensation law against like attack. (Shea v. North Butte Mining Company, 55 Mont. 522, 179 Pac. 499.)

An examination of the provisions of the act reveals by Section 9 a certified copy of such order is given to the officer taking such child to the school. By Section 15 of the act the school bills the county quarterly for these items of expenditure and the county in turn shall collect in its own right. Since there is no directly enforceable judgment against such person and the order of the board is not made enforceable by execution or like process, on the authority of the last cited case in a situation such as under discussion, the act is not unconstitutional.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General