

Therefore, it is my opinion that the superintendent of public instruction is without authority to qualify general obligation bonds sought to be issued by a community college district under Act 108, P.A. 1961.

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**COURTS: Probate Court, Juvenile Division:**

**Probate Court has no authority to operate institutional facility other than detention home.**

No. 4142

March 6, 1963.

Department of Social Welfare  
Lewis Cass Building  
Lansing 13, Michigan

Opinion has been requested on several questions relating to the operation of institutional facilities for children by the probate court. Each of these questions will be stated and answered in turn, for purposes of clarity and brevity.

1. Is there anything in existing law which authorizes the probate court to operate any institutional facility, other than a detention home as outlined in Chapter 712A, Sections 14 through 16, of the Compiled Laws of 1948?

Examples of such facilities would be a camp for delinquents, or a hospital program for disturbed children.

This question and the others dealt with in this opinion are addressed to the function of the probate court in connection with the juvenile division of such court under Chapter XIIA of the Probate Code, as now amended, being C.L. '48 § 712A.1 et seq.; M.S.A. 1962 Rev. 27.3178(598.1). While proceeding under this chapter, the probate court is termed the juvenile division of the probate court. Section 14 of the statute provides, with respect to a child taken into custody and not released, as follows:

“Any municipal police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his health, morals or welfare. Whenever any such officer or county agent takes a child coming within the provisions of this chapter into custody, he shall forthwith notify the parent or parents, guardian or custodian, if they can be found within the county. Unless the child requires immediate detention as hereinafter provided, the arresting officer shall accept the written promise of said parent or parents, guardian or custodian, to bring the child to the court at a time fixed therein. Thereupon such child shall be released to the custody of said parent or parents, guardian or custodian.

"If not so released, such child and his parents, guardian or custodian, if they can be located, shall forthwith be brought before the court for a preliminary hearing on his status, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his parents, guardian or custodian.

"In the event the complaint is authorized the order shall also direct the placement of the child, pending investigation and hearing, which placement may be in the home of parents, guardian or custodian, in the boarding care of a licensed child care agency, or in a suitable place of detention designated by the court." [C.L. § 712A.14; M.S.A. 27.3178 (598.14)]

Section 15, dealing with detention pending hearing concerning whom complaint has been made, provides in pertinent part as follows:

"\* \* \*

"Detention, pending hearing, shall be limited to the following children: . . . (d) Those detained for observation, study and treatment by qualified experts." [C.L. '48 § 712A.15; M.S.A. 27.3178(598.15)]

The above quoted provisions in Sections 14 and 15 make it possible for the court to use institutional facilities of any kind which meet the qualifications in those sections, but do not contemplate that the court will itself operate such facility, other than the detention home under Section 16. For example, a child might be detained in some such institutional facility as the Starr Commonwealth, which is a private child-caring institution, not actually operated by juvenile courts but often made use of by them because of its specialized skills. Similarly, under Section 15, children are often referred to Neuropsychiatric Institute at the University of Michigan pending hearing, for observation, study and treatment by qualified experts there or in some part of University Hospital. These are institutional facilities not operated by the juvenile division of the probate court, but often placed at the court's disposal.

Section 16 of the statute contains specific provision for a detention home to be conducted as an agency of the court, as follows:

"Provision may be made by the board of supervisors in each county for the temporary detention of children in a detention home to be conducted as an agency of the court, or the court may arrange for the boarding of such children temporarily in private homes, subject to the supervision of the court, or may arrange with any incorporated institution or agency approved by the state department of social welfare, to receive for temporary care of children within the jurisdiction of the court; or may use a room or ward, separate and apart from adult criminals, in the county jail in cases of children over 17 years of age and under 19 years of age within the jurisdiction of the court." [C.L. '48 § 712A.16; M.S.A. 27.3178(598.16)]

Section 16 further provides:

"In case a detention home is established as an agency of the court, the judge may appoint a superintendent or matron and other necessary

employees for such home who shall receive such compensation as shall be provided by the board of supervisors of such county.

“In case the court shall arrange for the board of children temporarily detained in private homes or in an institution or agency, a reasonable sum, to be fixed by the court, for the board of such children shall be paid by the county treasurer out of the general fund of said county.” [C.L. '48 § 712A.16; M.S.A. 27.3178(598.16)]

Thus, it will be seen that under Section 16, there is specific authority for the county to establish its own detention facility to be conducted as an agency of the court “for the temporary detention of children.” (O.A.G. 1955-56, Vol. 2, p. 743) It is also clear that the statute contemplates that the court will make use of non-court institutional facilities where these are available.

Section 16a of the statute provides that two or more contiguous counties may join together to construct and operate regional facilities for the diagnosis and custody of minors detained under the provisions of Sections 14, 15 and 16 of the chapter, or during an investigation conducted under the provisions of Section 12 of this chapter.

Study of the statute has not disclosed any other provision of law, either in the Juvenile Code or elsewhere, which would authorize the probate court itself to operate any institutional facility other than a detention facility as described in sections above referred to.

The reference in Section 14 to a “suitable place of detention designated by the court” is to be construed in harmony with the provisions of Sections 15, 16 and 16a, and not as an independent grant of authority to the court to operate a place of detention other than as described in the sections referred to.

With respect to a camp for delinquents, I find no authority for the court itself to operate such a camp, but I point out that Section 18(f) of the statute permits commitment of minors between 17 and 19 to the Michigan Corrections Commission, which under Act 232 of the Public Acts of 1953, as amended (C.L. '48 § 791.201 et seq.; M.S.A. 1954 Rev. Vol. 28.2271 et seq.), has authority to provide probation recovery camps and also has exclusive authority over wayward minors committed to it. This refers to post-commitment treatment rather than pre-hearing detention.

I also point out that another statute authorizes the county department of social welfare to operate and maintain an emergency receiving facility for homeless, dependent or neglected children, to be used only pending foster care placement or restoration to their own homes [C.L. '48 § 400.18d; M.S.A. § 16.418(4)]. This clearly does not constitute authority for the probate court to operate such a facility as a part of the court. It does, however, provide a local facility which the court can use. The requirements of the licensing law, being Act 47 of the Public Acts of 1944 Ex. Sess.; M.S.A. 1957 Rev. Vol. § 25.358(1) et seq.; M.S.A. 1961 Cum. Supp., must be met by the county emergency receiving facility for children.

Question 2 is as follows:

2. If the answer to question 1 is “yes,” does the fact that this type of institution is a local government facility exempt it from the pro-

visions of Act 47 of the Public Acts of 1944, sometimes known as the licensing law? If so, is the facility subject to the provisions of the Social Welfare Act (section 400.14(j) of the Compiled Laws of 1948), and to what extent?

For the reason that the answer to Question 1 is in the negative, Question 2 requires no answer.

Question 3 is as follows:

3. Does care provided in a court-operated institution other than the detention home qualify for reimbursement under the foster care provisions of the law? (See section 712A.25 of the Compiled Laws of 1948)

Because of the nature of the answer to Question 1, there is no court-operated institution other than the detention home available for discussion. Use by a court of a non-court institution, such as occurs in some counties, is authorized by Section 712A.25.

Foster care funds are available for this use under the following statutes:

“The commission shall provide for the distribution of such moneys for the foster care of children as shall be appropriated by the legislature to counties whose annual expenditures from county funds for foster care, as limited in this section, exceed a basic amount to be established as follows: Such basic amount shall be equal to 1½ hundredths of 1% of the value of the taxable real and personal property of the county as determined by the state board of equalization for the preceding year, unless in the case of any particular county the commission finds, upon careful examination of the financial resources and necessary expenditures of the county for all services, that it is unable to provide for foster care in so large an amount, in which case the basic amount to be expended by the county before state funds may be made available to it shall be reduced in an amount to be determined by the commission in relation to the county's financial situation: Provided, That the basic amount in every county shall not be less than \$2,000.00: And provided further, That the commission shall make an annual original foster care grant to each county of 90% of the first \$2,000.00 of annual expenditures from the child care fund of the county established in section 73 of this act, such grant to be considered county funds for the purposes of this section.

“Costs which shall be considered in determining the county's expenditures for foster care for the purpose of establishing the basic amount are:

“(1) Expenditures from county funds for the care of children committed to Michigan children's institute, boys' vocational school and girls' training school.

“(2) Expenditures, classified as required by the auditor general, made by the county or on the order of the judge of probate from the general fund of the county for the foster care of children, including children in detention pending adjudication.

"(3) Expenditures from the child care fund of the county established under Section 73 of this act. Such distribution of state funds shall be in an amount not less than 50% of the net cost of foster care paid from the child care fund of the county established in section 73 of this act, not including any amount of county expenditures from this fund which were used (a) to establish the said basic amount, or (b) to pay for the care of children admitted to Michigan children's institute, boys' vocational school and girls' training school: Provided, That all payments from the foster care fund made on order of the county department of social welfare are found by the commission to have been made in accordance with the standards of care and service established in section 18c of this act. In respect to those counties whose basic amount has been reduced by the commission or who receive other financial consideration by the commission in view of their need, the commission shall establish suitable per diem rates for foster care for any such county and may change such rates from time to time as may be necessary to insure economical and satisfactory foster care. Rates established will not be for the purpose of fixing minimum or maximum rates which a county may pay, but for the purpose of determining an average cost as the basis for allocating state funds. In the case of children cared for through licensed child caring institutions and placement agencies, such per diem rates may include a reasonable amount for supervision." [C.L. '48 § 400.18b; M.S.A. 1960 Rev. 16.418(2)]

"Foster care financed by a county department of social welfare shall be provided by the use of licensed child caring institutions or placement agencies in accordance with the needs of the child, or if licensed child caring institutions or placement agencies are not available, or there is a religious conflict, foster care shall be provided under the direct supervision of the county department, which care shall meet the following standards of care and service:

"(1) Personnel engaged in placement and supervision of children in foster care shall have qualifying training and experience.

"(2) Adequate records shall be maintained with information on the physical and mental health of the child, his emotional stability and family background, together with the reasons for the child's placement away from home to aid in planning for any child placed by the department, toward the end that the child may be reunited with his family as soon as it appears possible.

"(3) Family foster homes used by the department shall be selected with consideration of the religious, racial and cultural background of the child to be placed and children thus placed shall be visited in these homes at least once a month." [C.L. '48 § 400.18c; M.S.A. 1960 Rev. § 16.418(3)]

Such placements qualify for reimbursement through the foster care fund, whether or not operated by the court, on court order.

Question 4 is as follows:

4. Is the operation of a detention home authorized for any other purposes than to provide care prior to hearing and to assist the court

in carrying out a disposition involving care by an agency or institution outside the court structure?

You clarify the meaning of the latter part of Question 4 by indicating that you have in mind the situation which arises when a child must be held by the court after commitment pending an available bed in the state institution to which the child has been committed.

There is nothing in Sections 14 to 16 of the statute dealing with the establishment and functioning of a detention home, or in Sections 18 et seq. dealing with disposition which contemplates that a child may be committed to an institution operated by the local court. The statute contemplates commitment to non-court institutions, and does not in my opinion authorize the commitment to a court-operated facility.

In the event that no public or private agency is immediately available to receive the committed child, practical necessity may compel the temporary use of the court operated facility but only for such minimum period as shall be necessary to place the child in a public or private facility.

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**SCHOOLS: Teachers' Tenure — Reimbursement for expenses incurred by members of the Tenure Commission.**

**TENURE COMMISSION: Expenses — Reimbursement for expenses incurred by members of the Commission.**

State funds may not be used to pay expenses of State Tenure Commission members while attending local school board and teachers' association meetings for purposes not related to the Commission's duty to hold hearings and review decisions of local controlling boards.

State funds may be used to reimburse State Tenure Commission members for all reasonable expenses necessary to the performance of their duties as a reviewing board.

No. 4114

March 22, 1963.

Mr. Gerald Tuchow, Chairman  
State Tenure Commission  
1314 Nicolet Place  
Detroit 7, Michigan

You have asked for an opinion by this office on the following question:

Can state funds be used to pay the cost and expenses of members of the State Tenure Commission while attending meetings of various Michigan boards of education or teachers' associations for the purpose of explaining rules and regulations applicable to the Tenure Act and to encourage school districts to adopt the Teachers' Tenure Act?

The State Tenure Commission was created by Act 4, P.A. 1937, (Ex.