CHILDREN: Powers and duties of Superintendent of State Children's Home, and Juvenile Courts, with respect to commitment of children to State Children's Home.

May 22, 1937.

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Mrs. W. W. Henderson,
Executive Director,
Missouri State Children's Bureau,
Jefferson City, Mo.

Dear Mrs. Henderson:

A request for an opinion has been received from you under date of January 29, 1937, such request being in the following terms:

"An opinion is requested from your office in the case of the four Bond children and three Beard children committed by Judge Nike G. Sevier to the State Children's Home at a special juvenile court hearing held Wednesday, January 27, 1937 at which representatives of the State Children's Bureau were present and stated to the juvenile judge that the superintendent of the Children's Home at Carrollton had indicated that she would accept only the three youngest Beard children.

"No question as to commitment of the four Bond children had been brought to the superintendent of the State Home prior to the hearing. However, when the superintendent was interviewed by the county welfare superintendent as to the Beard children, she had stated that the State Home was filled to capacity, that there was an epidemic of scarlet fever and chickenpox and that no children could be received nor could they be placed out in foster homes at this time, but, because she had, sometime ago, indicated she would accept the three youngest Beard children, she agreed to do so now.

"Question 1. Has a juvenile judge the right to commit children to the State Receiving Home at Carrollton without consulting the superintendent of the Home as to the available beds and accommodations at the Home for the children?

Section 14100, Sentence 2: 'Whenever the number of children shall exceed

> the capacity of the home, preference shall be given to the younger children and to those in greatest need, and the children received shall be divided among the several counties as justly as possible, taking into consideration the number of such children in each county and its population. The board or superintendent of said home shall notify the juvenile court of the number of children that can be received from such county, whenever vacancies exost.'
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> Section 14095: 'The purpose of said Home shall be to provide for neglected and dependent children a temporary home that will furnish for them, pending placement in permanent family homes, proper care and instruction.'

"It would seem that childrencommitted to the State Home are committed under Chapter 125, Article 4, and that they are not committed as are juvenile delinquents under Section 14136 to 14158 covering juvenile courts in counties of less than 50,000 population.

"Question 2. If a juvenile judge commits children to the 'State Children's Bureau' under Section 12931 would the Bureau be compelled to accept children and place them in foster homes:

1. If no free homes could be found immediately?
2. If the Bureau had no fund appropriated by the Legislature for boarding home care for children?
3. If the county court of the county from which child was committed could not or would not pay the board of the child in a family home or an institution?

"Question 3. Has the superintendent of the State Children's Home the right to accept or reject children according to her judgment and interpretation of 'those in greatest need', and, 'taking into consideration the number of such children in each county and its population'?

"May I have as early a reply as possible to these questions?"

#3 - Mrs. W. W. Henderson May 22, 1937.

Your three questions, in effect, can be resolved into the single question of whether the Board of Managers of the State Eleemosynary Institutions, acting through the Superintendent of the Children's Home at Carrollton, is, under the applicable statutes, given the right to decide when children shall be received into such home under a commitment of the juvenile court. We call to your attention that your question 2 relates to commitments under R. S. Mo. 1929, sec. 12931, which section, together with the other sections contained in Art. 1, Ch. 90 of the Statutes, was repealed by Laws of 1933, p. 400.

The answer to your questions must be found in an analysis of Art. 4, Ch. 125 of R. S. Mo. 1929, as amended by Laws of 1933, p. 189, transferring the control and management of the Children's Home at Carrollton from the State Board of Charities and Correctionsto the Board of Managers of the State Eleemosynary Institutions, and vesting in the latter board the powers of the former. The scope of Art. 4 of Ch. 125 may be outlined by saying that it provides for the management of the Children's Home by the Board of Managers of the State Eleemosynary Institutions through a Superintendent, and that it also provides the machinery by which neglected children may be committed to the guardianship of such Board and to the Home itself.

I.

PROCEDURE FOR COMMITMENT OF CHILDREN.

R. S. Mo. 1929, sec. 14101, provides for the filing of a complaint to the judge of the juvenile court by any two citizens of that county alleging that a child is dependent on public support, in a state of habitual vagrancy or mendicity, or being improperly treated by its parents. The prayer of such complaint must ask that the child "be committed to the guardianship of the board". Sec. 14102 provides that the judge, upon the filing of the complaint, shall cite the parents or guardians of the child to show cause why the child should not be committed. Any person may appear on behalf of the child, and upon order of the judge the complainants and the prosecuting attorney of the county may be required to appear in support of the complaint. Sec. 14103 provides that the judge shall examine into the facts alleged and if he finds they are true, he shall cause the child to be examined by a physician and, upon certification by the physician that the child is of sound mind and

free from chronic or communicable disease, "the judge shall enter an order committing the child to the guardianship of said board". Thus it will be observed that on a complaint filed and heard under these three sections, the judge has no alternative and is required, by law, to commit the child to the guardianship of the board if he finds the facts to be as alleged in the petition and if the child's health meets the statutory requirements. It should also be noted that there is no provision for the Board of Managers of the State Eleemosynary Institutions or the Superintendent of the Children's Home, or anyone on their behalf, appearing at this hearing or having anything to say about whether the child complained of shall be committed to the guardianship of the board.

Sec. 14101 contains the following provision:

> "All commitments to said home shall be made by the juvenile court of the county of such child's bona fide residence."

This kind of commitment is something different from a commitment to the guardianship of the board as provided for in secs. 14101, 14102 and 14103. Each kind of commitment can only be made by the judge of the juvenile court. The commitment to the guardianship of the board must be made by the judge upon the establishment of the facts required by the statute, and the board has nothing to say about this kind of a commitment, but no such mandatory provisions apply with respect to commitments to the Home, and although such commitments must be made by the judge if made at all and can only be made by such judge, the question is whether the statutes contemplate that the board shall have any kind of control or voice in the judge's decision about a commitment to the Home.

II.

PROCEDURE AFTER COMMITMENT TO GUARDIANSHIP.

A commitment to the guardianship of the board and a commitment to the Home are not necessarily contemporaneous. Sec. 14105 provides that if, after a commitment to the guardianship of the board, the parents of the child committed shall refuse to surrender it, the judge of the juvenile court is to make an order requiring the proper officer of the court to produce the child in court and that the officer shall thereupon take the child and keep it at a proper place other

than the county jail or almshouse, under the direction of the judge and at the expense of the county "until the child has been committed to the state home herein provided for or otherwise disposed of according to law". Also, sec. 14100 provides as follows:

> "Only children under seventeen years of age who are dependent on the public for support, abandoned, neglected or ill-treated, and who are sound of mind, shall be received into said home: Provided, however, that nothing in this article shall be construed as preventing the board from receiving crippled children under 17 years of age, or children having infectious or contagious disease under 17 years of age or any other children under 17 years of age when adequate facilities or arrangements are established to care for them. Whenever the number of children shall exceed the capacity of the home, preference shall be given to the younger children and to those in greatest need, and the children received shall be divided among the several counties as justly as possible, taking into consideration the number of such children in each county and its population. The board or superintendent of said home shall notify the juvenile court of the number of children that can be received from such county, whenever vacancies exist. No child who can be received into the home shall be maintained in any county poorhouse or almshouse, but before any child under one year of age shall be ordered to said home, a written statement from the superintendent shall be obtained, showing that said child can be received and cared for in said home."

This last section shows that the General Assembly contemplated that there would be times when the Children's Home would be filled without being able to accommodate all of the children otherwise eligible for admission thereto who had been committed to the guardianship of the board. Otherwise there would not be this provision in sec. 14100 that the board or the Superintendent of the Home shall notify the juvenile court of the number of children that can be received from the county in which such court has jurisdiction. This recognition, coupled with the fact that the judge of any particular juvenile court has no discretion about committing a child to the guardianship of the board, shows that the General

Assembly contemplated that there would be cases where the judge would make an order committing a child to the guardianship of the board but not committing it to the Home. Sec. 14100 provides that the judge shall be notified "whenever vacancies exist". If there is a vacancy for a child from a given county and the judge of the juvenile court of that county is notified, or even possibly if he is not notified, the statute expressly authorizes him to commit the child at the same time to the guardianship of the board and to the Children's Home, but, of course, that is not in issue here, as your inquiry deals with a situation where the board has notified the judge that no vacancy exists.

Sec. 14096, as repealed and re-enacted by Laws of 1933, p. 189, gives the Board of Managers of the State Eleemosynary Institutions "the general control and management of said home" and sec. 14099 provides that such board "shall prescribe regulations for the government and conduct of the institution". Thus the board is given a rather complete jurisdiction over the Children's Home and authorized to make its own decisions as to the conduct of the Home, which would presumably include the decision as to how many children can properly be cared for therein. The question of whether there is a vacancy in the Home would seem to be a question of fact which the board would be better able to decide than anyone else. As noted, sec. 14100 requires the board or the Superintendent to notify the court of the proper county "whenever vacancies exist" and since the board and the Superintendent could not give this notification unless they had determined that vacancies exist, it would seem that this power is also expressly vested in the board. Sec. 14100 also provides that the children received into the Home "shall be divided among the several counties as justly as possible, taking into consideration the number of children in each county and its population". Since the judge of the juvenile court of any given county could not be expected to know the situation as to delinquent children in other counties, this must mean that the board and the Superintendent of the Home are also given the power to decide which county is entitled to send a child to fill each vacancy as it occurs, and for the judge of the juvenile court of a county to make a commitment to the Home when he had been advised that there was no vacancy in the Home or that his county was not entitled to send a child to fill the next vacancy, would not seem to be in harmony with the intent of the statute. In other words, the phrase "when vacancies exist" as used in sec. 14100 must mean "when vacancies exist for that county". Sec. 14100 also says that whenever the number of children shall exceed the capacity of the Home "preference shall be given to the younger children and to those in the greatest need". It is

not certain whether the statute contemplates that the judge of the juvenile court or the board shall decide which children from that county are in the greatest need, assuming that the court has been notified that a certain number of vacancies exist for that county and that there are more children in that county already committed to the guardianship of the board but not committed to the Home than there are vacancies, but it is unnecessary for us to pass on this question to answer your inquiry.

Sec. 14100 also says that before any child under one year of age shall be ordered to the Home, a written statement from the Superintendent shall be obtained, showing that said child can be received and cared for in said Home. The court is thus forbidden to make a commitment of such a child without procuring this written statement, and it might be argued that by expressly requiring this consent from the Superintendent in the cases of children under the age of one, that by implication the statute provides that no such consent is necessary with respect to children over the age of one, but in view of the other statutory provisions analyzed above and hereafter, we do not believe that such was the intent of the General Assembly and we do believe that this provision about children under one year of age was doubtless intended merely as an additional safeguard in the cases of very young children to avoid unnecessary transportation of them because of the risks involved, and thus we believe that it is not proper in any case for the judge of a juvenile court to make an order committing a child to the Home unless the board, through its Superintendent, has determined that a vacancy is available for that county.

Of course we do not mean to imply that the board and the Superintendent of the Home can act arbitrarily or unreasonably in deciding whether a vacancy exists, or whether a particular county is entitled to fill such vacancy, or that its decisions of this kind are not subject to review by the juvenile court. Suppose, for example, that on a hearing as to whether a child shall be committed to the Home, the board, through its representatives, appears in court and offers evidence that there is no vacancy and that other evidence is offered tending to show that there is a vacancy, that the county in which the judge is sitting is entitled to fill that vacancy, and that the board is attempting to discriminate against that county. Under such circumstances, in our opinion, the court, after hearing the evidence, could, if in the opinion of the court the evidence supported such an order, adjudge that there is a vacancy available to that county and could properly make an order committing a child from that county to the Home over the protest of the board

and in the face of the board's finding that no vacancy did exist, and in our opinion such a judgment would be proper and would be upheld by the appropriate court of last resort. Also, we do not mean to say that even if the evidence at a hearing on the question of committing a child to the Home were all one way, and uncontradicted and showed plainly that there was no vacancy, that if the court in the face of such evidence should make an order committing the child to the Home, as was done in the instant case, that the board could refuse to obey the court's order and refuse to take the child. If the court should so act, the proper procedure for the board would be to seek a review of the court's decision by a higher court, or to seek to have it modified in that court, or in some way to obtain judicial relief from the improper order of the juvenile court, but so long as there is in force an order of the juvenile court making a commitment to the Home, the board has no alternative but to obey that order, even although the order is improper, until such order is modified or set aside or vacated or reversed. Thus our opinion here is confined to passing on the question of what we believe a court of last resort would decide is the right procedure under these statutes in construing them, and we are attempting to give you our opinion on what these statutes mean as a rule of conduct and procedure for the board and the several juvenile courts, as requested by you. We have not seen the order with respect to the Bond and Beard children, which, if it has become final, must be obeyed by the board unless and until it is in some way modified or set aside, as, plainly, the court had jurisdiction of the parties and the subject-matter. If a situation should arise in the future in which the board believes that under the statutes, as construed in this opinion, the juvenile court of a particular county proposes to act or has acted contrary to these statutes, prompt steps should be taken by the board, through its counsel, to make a proper record in that court so that it can be reviewed and required by a higher court to follow the mandate of the statutes.

No cases have been decided construing any of Article 4 of Chapter 125 which we have been construing herein, and our opinion is therefore based on an analysis of the statutes in this article.

In conclusion, taking up your questions in order, in the light of the foregoing analysis: As to question 1, a judge of the juvenile court has the power to commit a child to the Home without consulting the Superintendent of the Home, or even after consulting the Superintendent and being advised that there are no vacancies for that county, but such judge has not the right to do this if the representatives of the board have appeared in his court and shown that the board, acting reasonably and in the exercise of its sound discretion, has determined that there are no vacancies available for that county.

#9 - Mrs. W. W. Henderson May 22, 1937.

We have already mentioned that your question 2 relates to procedure under a statute which is no longer in force. As to your question 3, the Superintendent of the Children's Home has no right to accept any child not committed to the Home by a juvenile court, or to reject any child committed to such Home by an order of such court then in force, regardless of her judgment and interpretation of the facts and the law, but if such order of court was made improperly, as explained above, the Superintendent should be able successfully to have it set aside.

Very truly yours,

EDWARD H. MILLER,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting)Attorney General.