

JUVENILES:

Who is responsible for medical and surgical needs of juveniles on replacement from the Training Schools. Four questions.

March 16, 1949



Hon. W. E. Sears, Director  
Board of Training Schools  
State of Missouri  
Jefferson City, Missouri

Dear Mr. Sears:

Your letter of recent date requesting an opinion of this department as to the liability and responsibility to juveniles placed on parole contains four questions which are as follows:

- 1) Who is liable in the event of an injury or fatality occurring to a boy or girl who has been released from one of the training schools?
- 2) Who would be responsible for costs of surgery or medical care for a boy or girl under placement procedure and prior to the expiration of their term?
- 3) Should medical attention or surgery be determined necessary for a boy or girl, in one of the training schools or away from the training school on placement, must approval of the parents or guardian be secured prior to medical action or surgery?
- 4) In the event the parents consent is not necessary may the training school board authorize the needed service?

In reference to the first question set out in your letter wherein you ask, "Who is liable?" We Believe that you mean who would be responsible for costs and expenses in the event of an injury or fatality to a boy or girl who had been released from one of the training schools, rather than who would be liable in the event of an injury or fatality occurring to a boy or girl who had been released from one of the training schools.

Each of the above questions has reference to the care, liability and responsibility to a juvenile placed in the custody of the

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Board of Training Schools of the State of Missouri, or in the custody of what is referred to, as a replacement home.

Section 34A, Laws of Missouri 1945, page 734 reads as follows:

"The board of training schools is hereby authorized to release on parole juveniles committed to institutions under its control; to impose conditions upon which such paroles are granted; to revoke and terminate such parole; and to discharge from legal custody. Release on parole shall be in accordance with rules and regulations made a matter of record by said board. Said board is hereby authorized to call upon the state board of probation and parole for pre-parole investigations and for supervision of and assistance to juveniles after their release from training schools. Said board of probation and parole is hereby authorized and it shall be their duty to furnish when requested reasonable services of the character herein indicated."

This section provides that the Board of Training Schools may release on parole juveniles committed to the institutions under its control in accordance with the rules and regulations made a matter of record by said board.

Section 9005, Laws of Missouri 1947, Vol. 2, page 323, 324 provides as follows:

"There shall be paid to the board of training schools by the county from which the child is committed the sum of fifteen dollars per month for the support, maintenance, clothing, and all other expenses of each child committed to the board, from the time of his reception by the board until his discharge; Provided, that no payment shall be made for the time that any child may be absent from the school or other institution. \* \* \* \* \*

In the case of New York Foundling Hospital v. Gatti, 203 U. S. 429 in dealing with what is to the best interest of the child, says:

"\* \* \* The State acts upon the assumption that its authority as parens patriae super-

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sedes all authority conferred by birth.  
People v. Chegary, 18 Wend. 637, 642;  
People v. Mercein, 8 Paige Ch., 47, 69."

This indicates that the State has a greater right to the care and custody of a child under its jurisdiction than that of a parent.

Spencer on the law of Domestic Relations, Section 627, page 548 says:

"\* \* \* \* Beyond this, public and private beneficence has established in most states special institutions and agencies for the care of abandoned, neglected, delinquent and incorrigible youths of both sexes, and commitment to these institutions or to the care or supervision of these agencies may not only follow a conviction of crime in lieu of commitment to a technically penal institution, but may be had in cases where the child, though convicted of no specific offense, is in need of the special guardianship, discipline and protection that these institutions and agencies afford."

Section 9694, R. S. Mo. 1939 provides:

"This article shall be liberally construed to the end that its purpose may be carried out, to-wit, that the care, custody and discipline of the child shall approximate as nearly as may that which should be given by its parents; and that as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided and needing aid, encouragement, help and assistance."

In American Jurisprudence, Vol. 39, Section 61, page 698, it is said:

"\* \* \* \* School teachers, at least for purposes of discipline stand in loco parentis, as also do college authorities."

Vol. 46, Corpus Juris, Section 174, page 1334 reads as follows:

"A person standing in loco parentis to a child is one who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation, without

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going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent. The assumption of the relation is a question of intention, which may be shown by the acts and declarations or the person alleged to stand in that relation. (Underscoring ours)

"A charitable institution having statutory power to receive deserted children stands to them in loco parentis."

Section 175, page 1335 reads as follows:

"A person standing in loco parentis is entitled to the custody of the child, as against third persons, unless his conduct renders him unfit for such custody, and necessarily acquires such power of control over the person of the child as is incident to the family government.

"A person standing in loco parentis to a minor child has the right to fix or change the child's domicile.

\* \* \* \* \*

"The rule that a parent cannot irrevocably divest himself of the right of custody over his minor child by a contract or agreement to surrender it to another extends to one who stands in loco parentis.(Page 1336).

Section 176, page 1336 reads as follows:

"As in the care of natural parents, a person standing in loco parentis is bound for the maintenance, care, and education of the child, and liable for necessaries furnished to it, and he cannot, while such relation exists, be allowed to assert a claim for the support of the child to whom he stands in such relation, in the absence of an express or implied understanding

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that he is to be compensated therefor. The poverty of the person standing in loco parentis may, however, rebut the presumption that the support was furnished gratuitously."

When a juvenile has been committed to the Board of Training Schools or to an institution under its control by a court of competent jurisdiction the law imposes upon said board and the institution certain responsibilities as provided for in Section 26, Laws of Missouri 1945, page 731, 732 which reads in part as follows:

"It shall be the duty of the board of training schools to administer and control all matters relating to the organization and functioning of the training schools of this state, and any branches and divisions thereof. The board shall provide for the reception, classification, care, activities, correction, education and rehabilitation of all juveniles committed by law to its charge or to any institution under its control."

This duty continues so long as the juvenile is in the custody or under the control of said board and until this relationship is changed by operation of law.

Said duty and obligation on the part of the Board of Training Schools and the institution under its control creates a relationship of loco parentis of the Board of Training Schools to the juvenile and the right of a person standing in the position in loco parentis to fix or change the domicile of a child is stated in Vol. 46, Corpus Juris 175, page 1335, heretofore quoted.

When a person accepts a child from the State Board of Training Schools or one of its institutions under its control for the purpose of taking him into their home and the relationship of parent and child are permitted to exist, the person so taking such child places himself in the position of loco parentis to the child.

The rule stated in Vol. 46 Corpus Juris, Section 174, page 1334, heretofore quoted was followed in the cases of Austin vs. Austin, 22 N. W. (2d) 560, 563; 147 Nebr. 100; and Meisner vs. U. S., 295 Fed. 866 (D. C. Mo.).

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In the case of Capek v. Kropik, 21 N. E. 836, 837, 129 Ill. 509, the court said:

"\* \* \* The husband is not bound to accept into his family the children of his wife by a former husband, but if he does so voluntarily, so long as the relation is permitted to continue he assumes the duties and obligations of a parent. So it is said, 'that a person in loco parentis means a person taking upon himself the duty of a father to make provision for the child.'"

Therefore, it would seem that where a person takes a child from any of the institutions under the control of the Board of Training schools into their home under circumstances mentioned above that he would place himself in the relationship of loco parentis to the child.

In the instances where a child is taken from the Board of Training Schools and placed under what they call "recognized job situation" but not necessarily kept in the home of a sponsor or employer, but the setup is such that the Board approves the same as being for the best interest of the child, creates the relationship of master and servant, and the liability and responsibility is somewhat different from that where the relationship of loco parentis exists.

In the case of Hunicke v. Meramec Quarry Co., 189 S. W. 1167, the court said that:

"An employer owes to an employe injured while at work so seriously as to be incapacitated from securing assistance from himself and in need of immediate first aid and medical and surgical treatment the duty to furnish first aid as well as medical treatment, \* \* \* \* \* ."

This liability, however, would exist and continue only during the hours which the juvenile is under the care and supervision of the employer, and during which time the law places the liability upon the employer. Before and after such hours the responsibility would be on the one standing in a position of loco parentis to the juvenile.

Since the state's right to a juvenile supersedes that of the natural parent; and since it is the duty of the trial court to act for the best interest of the child; and since the court retains

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that authority until the child maintains its majority or until (in case of a definite term, then to the end of that term) the State Board of Training Schools and the home selected by it for replacement purposes, and the so-called recognized job situation selected and approved by the Board of Training Schools, the same purpose is their primary object, that is, what is to the best interest of the child. It would follow that the Board of Training Schools and the institutions under its control would be authorized to give permission for needed medical and surgical care, also the person or persons standing in the relation of loco parentis would have the right to consent to needed medical and surgical care as, also, would the master in the case of the relationship of master and servant in case of an emergency, if under all circumstances considered at the time and place, it is deemed to be for the best interest of the child.

#### CONCLUSION

It is the opinion of this department that:

- 1) The person or persons standing in the relationship of loco parentis to that of a boy or girl on replacement from the training school would be responsible for the costs and expenses in case of an injury or fatality.
- 2) The person standing in the relationship of loco parentis, and that in cases where the relationship of master and servant is created, the master, if the medical or surgical services are created out of the hazards or course of employment, would be responsible for the costs of such needed medical and surgical care.
- 3) Since the law creates the relationship of parent and child between the one standing in the position of loco parentis to the child it is our opinion that such person or persons could authorize such needed medical and surgical care as

