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**ARIZONA ATTORNEY GENERAL**

Opinion No. 63-14  
R-132  
February 13, 1963

REQUESTED BY: THE HONORABLE CHARLES N. RONAN  
Maricopa County Attorney

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTIONS:

1. When a child is committed to the Arizona Children's Colony under A.R.S. §8-423 or §8-425 and is found to be an indigent, is the county of the residence of the child at his time of commitment liable for the maintenance of the child at the Colony even though the child's parents move to another county of the state or move outside the State of Arizona?
2. If the county of the residence of the child at the time of commitment is liable for the maintenance of him at the Colony, how can this liability of the county be decreased or ended prior to the child's discharge from the Colony?

ANSWERS:

1. Yes.
2. See body of opinion.

Arizona Revised Statutes §8-425(D) states:

"From and after admission in the colony of a child transferred to the colony from a state institution, the child, parent or guardian, or, in the case of an indigent or dependent child, the county in which the child resided when committed to the state hospital, shall pay the cost of maintaining, training and educating the child, the amount to be determined by the board upon investigation and payable as provided by §8-429." (Emphasis added)

Arizona Revised Statutes §8-429(A) states:

"If it appears to the board, upon investigation of the petition for admission, that a child or his parent or guardian can pay for his maintenance, training and education in the colony, the board shall require payment quarterly, in advance, of an amount sufficient to maintain, train and educate the child. The cost of maintenance, training and education of a dependent or indigent child shall be a charge against the county in which the child resides at the time of admission to the colony

and against the estate, parent or guardian of such child in the amounts determined by the court at the hearing provided for in §8-423." (Emphasis added)

Arizona Revised Statutes §8-423(A) (4) and §8-423(B) states:

"A. Upon receipt of application for admission of an indigent, the board shall file the petition for admission with the superior court of the county in which the child resides. The superior court shall:

. . .

"4. Notify the parent, relative or guardian of the child, at least fifteen days prior thereto, of the date of hearing, at which they shall appear and show cause why they should not bear either the full cost or a portion thereof of maintaining the child at the children's colony.

"B. If the court finds upon hearing, that the child resides within the jurisdiction of the court, is not afflicted with or a carrier of a contagious or infectious disease, and that the allegations contained in the petition are true, it may order admission of the child to the colony, and shall determine the amount the child's estate, parent, relative or guardian shall pay for maintenance of the child at the colony."

Arizona Revised Statutes §8-421(A)(3) states:

"A. A minor child may be eligible for admission to the colony if:

. . .

3. His estate or his parent, relative or guardian is able to pay quarterly, in advance, a sum sufficient to maintain, train and educate the child, or, if an indigent, the county in which the child resides will pay quarterly, in advance, for his maintenance." (Emphasis added)

Throughout Title 8, Chapter 4, entitled "Arizona Children's Colony," references to the county liable for payment of maintenance of an indigent child are described as "the county in which the child resided when committed to the state hospital," A.R.S. §8-425(D), "the county in which the child resides at the time of admission to the colony," A.R.S. §8-429(A), and "the county in which the child resides" A.R.S. §8-421(A)(3) and §8-423(A). Thus, after examining all the sections of Title 8, Chapter 4 pertaining to the Arizona Children's Colony, it is apparent that the Legislature intended for the county in which the indigent child resided at the time of his admission to the colony or the county in which the indigent child resided when committed to the state hospital to be liable for the cost of maintenance of the child irrespective of the future residences of his parents. The answer to question number 1 is yes, if the indigent child was not committed to the Colony from a state institution. If, however, the child was committed from a state institution, namely, the state hospital, then the county in which the child resided when committed to the state hospital is liable for cost of maintenance of the child.

The only possible ambiguity among the sections of Title 8, Chapter 4 pertaining to the county liable for cost of maintenance of an indigent child, stems from the references in A.R.S. §8-421(A)(3) and §8-423(A) to merely "the county in which the child resides" and a more specific reference in A.R.S. §8-429(A) to "the county in which the child resides at the time of admission to the colony." But, since a specific provision of a statute governs over a general provision, the reference of A.R.S. §8-421(A)(3) to "the county in which the child resides at the time of his admission to the colony" is controlling. Bell v. Vaughn, 46 Ariz. 515, 518, 53 P.2d 61 (1935).

With respect to the termination of county's liability, the liability can be ended or decreased in amount if the child becomes no longer indigent or if his parent or guardian can bear the full cost or a portion of the cost of maintaining the child at the Children's Colony. Admittedly, no specific provision of A.R.S. states that a county may be relieved of its liability after the child has been admitted to the colony unless the child is subsequently discharged. Yet, our Supreme Court, in dealing with the question of liability for cost of maintenance of an indigent patient in the state hospital, ruled that the Superior Court had continuing jurisdiction over the patient and that subsequent to his admission, an order to show cause could be brought as to why the patient could not then pay the cost of his maintenance. State of Arizona v. Glenn, 60 Ariz. 22, 29, 131 P.2d 363 (1942). While the statutes construed in the Glenn case

have been superceded by A.R.S. §36-215 and §36-510, the present sections are substantially the same in respect to the court's determination of the amount to be paid from the patient's property. Consequently, the Legislature is presumed to have placed its approval upon the Glenn case and made it part of the present sections. Marquez v. Rapid Harvest Co. 89 Ariz. 62,66, 358 P. 2d 168 (1960). While the defendant in the Glenn case contended that the then existing Code restricted the court's investigation into the assets of the patient to only the property owned at the time of his examination for admission to the hospital, the Court rejected this contention and stated on p. 29 of 60 Ariz.:

" We hold, therefore, that Section 17 of chapter 44 supra, authorizes and directs the court to make inquiry into the ability of an insane person committed by it to pay the expenses of his maintenance at any time that it may deem proper. This is but common sense. It is, and always has been, the clearly indicated intent of the legislature that while no person will be debarred the care and protection of the state hospital because of a lack of ability to pay for such care, those whose estates are able to bear the expense should do so. It is often the case, as is evidenced in the present situation, that at the time of commitment the estate of the incompetent may be utterly unable to pay anything for his maintenance, while at a later date it may, from various causes, become amply able to bear the burden.

" We hold, therefore, that the superior court of Pima County, which had jurisdiction of the person of the incompetent at the time of his commitment, had jurisdiction at any time thereafter to consider his ability to pay for his maintenance, and to make such order as was proper in the premises."

Similarly, A.R.S. §8-423 should be interpreted to enable the superior court of the county in which the child resided at the time of commitment to have jurisdiction at any time after his commitment to consider the ability of his property, or his parent's property to pay for his maintenance at the colony. See Department of Mental Hygiene v. McGilvery, 50 C. 2d 742, 329 P.2d 689 (1958) where the court enforced payment for support and maintenance of a mentally ill patient in the state hospital against the estate of the patient's mother. See also State Commission on Lunacy v. Eldridge, 7 Cal.App. 298, 94 Pac. 597, 599, 600, reh. den. 94 Pac. 600 (1908) where the California

Court of Appeal, Third District, held that a father could be held accountable for his adult son's maintenance at the state asylum even though the father argued inter alia that such a charge against him would be double taxation and taking of private property for public use without compensation. See also In Re Stoner's Estate 358 Pa. 252, 56 A.2d 250 (1948) where the court allowed payment out of the deceased mother's estate for prior county support and maintenance of the deceased's mentally defective daughter and four grandchildren.

In State v. Thompson, 45 Wyo. 350, 18 P.2d 619, 621 (1933) the Court concluded that an insane person's guardian must pay the expense of caring for the ward at the state hospital whenever he has funds of the estate to meet the charges. Generally see the annotation in 1 A.L.R. 2d 910, 941-946.

Consequently, it is the opinion of this office that the county where the child resided at the time of his commitment to the colony or at the time of his commitment to another institution from which he is transferred to the colony should be relieved of paying for the maintenance of a child found to be indigent prior to his commitment provided:

1. His property subsequent to his commitment to the colony or the other state institution from which he is transferred to the colony is increased so his property through his guardian can adequately pay for his maintenance, or
2. His parent or parents subsequent to his commitment become adequately financially able to pay for his maintenance.

If his property through his guardian can adequately pay his past free maintenance, then the county previously paying his maintenance should be reimbursed through his guardian. The county similarly can be reimbursed from the parent or parents if they are adequately financially able to pay the county for prior free maintenance of his or their child. Thus, the county can have the newly acquired funds applied retroactively as well as prospectively. State of Arizona v. Glenn, supra; State v. Byrne, 137 Mt. 113, 350 P.2d 380 (1960); Department of Public Welfare v. A'Hern, 14 Ill. 2d 575, 153 N.E.2d 22 (1958); South Carolina Mental Health Comm. v. May, 226 S.C. 108, 83 S.E. 2d 713 (1954); and Guardianship of Phipps, 247 P. 2d 409, 112 C.A. 2d 732 (1952).

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Since the Superior Courts of Arizona are constituted as a single court, Art. 6, §14, Arizona Constitution and since the Superior Court has jurisdiction at any time after the child's commitment to determine his estate's or his parent's ability to pay for his maintenance at the colony, c.f. State of Arizona v. Glenn, supra, the county responsible for paying the maintenance of the alleged indigent child can sue the child's guardian or his parents in any county in Arizona. If the parents have left the State of Arizona, an action may be filed by the Board of the Children's Colony against the parents pursuant to the Uniform Reciprocal Enforcement of Support Act, A.R.S. §12-1662. The county can file an action against the parents if they have left the State by authority of A.R.S. §12-1659.

The County claims should not be barred by the statutes of limitations. A.R.S. §12-510; Maricopa County v. Rodgers, 52 Ariz. 19, 221 78 P.2d 989 (1938). Furthermore, laches or estoppel should not be applied against the county. Kerby v. State ex rel. Frohmiller, 62 Ariz. 294, 307, 157 P.2d 698 (1945).

No claim, however, can be made for any period subsequent to the death of the parent sought to be liable. Re Falsey, 56 N.Y.S. 2d 556, 560 (1945); In Re Brubaker's Estate, 346 Pa. 339, 30 A2d 135 (1943). When both parents are living, the county claim would first be against the community property of the parents, then against the separate property of the father and finally against the separate property of the mother. Barrett v. Barrett, 44 Ariz. 509, 39 P.2d 621 (1934). A.R.S. §14-206 (A) and §46-295.

  
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