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July 14, 1987

Mr. Richard T. St. Clair
Secretary of Youth Harbor, Inc.
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Mr. St. Clair:

Your letter asked whether the law enforcement agency or the Department of Health and Welfare has legal custody and financial responsibility for minor children taken into custody by the law enforcement agency, but not yet remanded to the custody of the Department of Health and Welfare by a court order under the Child Protection Act (CPA).

Pursuant to Idaho Code § 32-1003, a parent is responsible for the necessary expenses of a child, and a third party may provide the necessaries and recover the cost from the parents. Isaacson v. Obendorf, 99 Idaho 304, 581 P.2d 350 (1978). A court order vesting custody of a child in a third party does not relieve the parent of the primary duty of support. Stafford v. Field, 70 Idaho 331, 218 P.2d 338 (1950). If the parents are indigent, they may be eligible for benefits under the county indigency program as provided in title 31, chapters 34 and 35, Idaho Code.

Idaho Code § 16-1612 authorizes a peace officer to take a child into custody when the child is endangered in his surroundings and prompt removal is determined to be necessary in order to prevent serious physical or mental injury to the child. Although § 16-1612 uses the term "custody" and authorizes "custody" without a court order, the CPA in § 16-1602(1) defines "legal custody" as a relationship created by court order. It should be kept in mind that this relationship may be something different from the other type of "custody" relationship discussed in the CPA.

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Whenever a peace officer takes a child into custody under Idaho Code § 16-1612, the act requires the officer to immediately take the child to a place of shelter. Idaho Code § 16-1613(a)(1). Appropriate places of shelter are prescribed by the courts by administrative order. (See Idaho Juvenile Rules, Rule 7.) The child may remain in shelter care for up to 48 hours without a shelter care hearing and court order. After the shelter care hearing, the court is authorized to enter an order of temporary custody. Idaho Code § 16-1614(e). The court is not restricted in the range of custodians for temporary custody pending the adjudicatory hearing. After the adjudicatory hearing the court is expressly authorized to commit a child to the Department of Health and Welfare by Idaho Code § 16-1610(b)(2).

The Idaho Department of Health and Welfare has been given specific responsibility in this area by Idaho Code § 56-204A, which provides that:

The state department is hereby authorized and directed to maintain, by the adoption of appropriate rules and regulations, activities which, through social casework and the use of other appropriate and available resources, shall embrace:

(a) Protective services on behalf of children whose opportunities for normal physical, social and emotional growth and development are endangered for any reason;

* * *

(d) Undertaking care of, and planning for children including those committed to the state department by the courts.

Such rules and regulations shall provide for:

* * *

(8) Specifying the conditions under which payment shall be made for the purchase of services and care for children, such as medical, psychiatric or psychological services and foster family or institutional care, group care, homemaker service, or day care.

Pursuant to statutory authorization the Department of Health and Welfare has adopted Rules and Regulations Governing Social Services contained in title 3, chapter 2, of the Rules and Regulations of the Idaho Department of Health and Welfare, particularly §§ 16 IDAPA 03.2301.06, 03.2325, and 03.2328.

Specific responsibility is placed upon the Department of Health and Welfare by Idaho Code § 56-204B, which provides that:

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Temporary Shelter Care.--The state department shall provide places of shelter which may be designated by the magistrate courts as authorized by law for the placement of children for temporary care who have been brought into the custody of the magistrate courts or who have been taken into custody for their protection by peace officers. Such places of shelter may be maintained by the state department or may be licensed foster family homes or licensed foster institutional facilities employed or retained for shelter care by the state department.

Idaho Code §§ 56-204B and 56-204A were adopted in 1963. However, § 56-204B was amended in 1974, changing probate courts to magistrate courts.

Under Idaho Code § 56-204B, the Department of Health and Welfare must either maintain places of shelter or contract with places to provide shelter care. Thus, the Department is responsible for the cost of shelter care, i.e., room and board. However, Idaho Code § 56-204A authorizes the Department to specify by rule the conditions under which other items, such as medical care, will be paid.

In answer to your specific questions, the children remain in legal custody of their parents until the court enters an order following the adjudicatory hearing. The parents will remain primarily responsible for the costs of shelter care and ancillary necessary expenses. The Department is obligated to pay for the costs of shelter care subject to reimbursement from the parents.

Very truly yours,



PATRICK J. KOLE
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PJK/tg