

**259.31 HEARINGS, CONFIDENTIAL**

HISTORY. 1951 c 508 s 11.

Adoption as confidential in nature. 36 MLR 397.

**259.32 APPEALS**

HISTORY. 1951 c 508 s 12.

## CHAPTER 260

### DEPENDENT, NEGLECTED, DELINQUENT CHILDREN

**260.01 DEFINITIONS**

HISTORY. 1897 c 210 s 3, 6; 1905 c 285 s 1; 1907 c 92 s 1, 2; 1907 c 172, 394; 1909 c 172; 1909 c 204 s 1; 1909 c 232, 305, 394, 418; 1911 c 149 s 1; 1911 c 353 s 1; 1913 c 43 s 1; 1913 c 83 s 1-3; 1913 c 260 s 2; 1913 c 364 s 1; GS 1913 s 7162-7196; 1915 c 228; 1917 c 397 s 1; GS 1923 s 8636; 1927 c 192 s 1; MS 1927 s 8636; 1949 c 39 s 1.

Children of divorce. 32 MLR 766.

An abandoned child, or a child in an unfit place for him by reason of his parents' improvidence or neglect, is termed a "neglected child" within the social welfare statutes. Where minor children, domiciled in Lyon county with parents were placed in a home in Martin county after having been adjudged neglected children, and their temporary custody placed in the Lyon county welfare board, the children retained the domicile of the father at the time the parents were found to have neglected them, and their constructive domicile in Lyon county, without actual physical presence therein, was sufficient to meet the requirements of being "residents" of Lyon county. The probate court of such county had jurisdiction of proceedings for the appointment of a general guardian of the children. *Kowalke's Guardianship*, 232 M 292, 46 NW(2d) 275.

The state as *parens patriae*, possesses protective power over dependent and delinquent infants and may exercise it in the manner prescribed by statute. The government must consider the welfare, comfort and interests of a child in regulating its custody. In re adoption of Anderson, 235 M 192, 50 NW(2d) 278.

In order for the recovery of the parent to be barred because of negligence in connection with the supervision of a trespassing child who has suffered injury from an artificial condition maintained on land entered upon, evidence must establish that parent had some knowledge that child was frequenting dangerous area and failed to warn with reference thereto or, to otherwise take adequate precautions to prevent child from going into such area. *Doren v Northwestern Baptist Hospital Ass'n*, ..... M ..... , 60 NW(2d) 361.

Before any commitment is made to the commission it should file its certificate as prescribed by subdivision 11, to the effect that it is prepared to discharge its duties and functions. If not prepared to accept all commitments the commission should serve only those it is prepared to properly serve with its present facilities. OAG Oct. 1, 1947 (145-B-1).

The proceeds of a claim for damages for death by wrongful act were divided between the widow and four minor children. The children's money was deposited in a savings bank for the children. The mother having exhausted her funds has applied for relief under the Aid to Delinquent Children Act. The money arising from the claim for wrongful death is not a part of the estate of the deceased. It belongs to the surviving spouse and next of kin. The district court having authority to order the money deposited in a savings account for the children would have power to

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modify his order. The mother or the county agency, or both of them, may apply to the court for an order for payment, or all of the money for the children's support. If the court refuses to make such an order, and without such money the children are actually dependent, they would be eligible for aid to dependent children. OAG Nov. 3, 1949 (540).

### 260.02 DISTRICT COURT, PROBATE COURT; JURISDICTION

The jurisdiction of a juvenile offender vests in the juvenile court exclusively in the first instance. Jurisdiction may not be conferred upon a justice of the peace by consent of the juvenile since the state does not consent and the justice does not have the jurisdiction over the subject matter. A justice who wilfully assumes such jurisdiction may be removed from office. OAG April 29, 1953 (268-F).

In making a commitment of a child as dependent, neglected, or delinquent the presence of the infant child is not required in court at the time of the hearing. OAG March 13, 1952 (268-H).

### 260.03 JUVENILE COURT JUDGES

HISTORY. Amended, 1951 c 342 s 1.

### 260.04 CLERK TO ASSIGN DEPUTY; SALARIES

HISTORY. 1905 c 285 s 3; 1907 c 394 s 1; 1909 c 418; 1911 c 122; 1913 c 191 s 1; 1913 c 364 s 1; GS 1913 s 233-235, 7164; 1917 c 397 s 4; GS 1923 s 8639; MS 1927 s 8639.

### 260.05 BAILIFF, SALARY; RAMSEY COUNTY

HISTORY. 1911 c 149 s 1; GS 1913 s 7193; 1915 c 134; 1917 c 397 s 5; GS 1923 s 8640; 1927 c 420 s 6; MS 1927 s 8640; 1929 c 405 s 1; M Supp s 8640; 1949 c 54 s 1.

### 260.06 PROBATE COURT AS JUVENILE COURT; RECORD; APPEAL

A mother in an illegitimacy case, although not of age, has capacity to consent to the adoption of her child. The statute requires nothing more than the consent of such mother as a prerequisite for the valid commitment to the guardianship of a child-placing agency for placement for adoption. In such event the commitment to the state director of social welfare or the child-placing agency is a final adjudication of parental rights and subject to the right of appeal terminates permanently such parental rights and places them beyond recall by any attempted revocation or withdrawal of consent. Adoption of Anderson, 235 M 92, 50 NW (2d). 278.

A youth found to be delinquent by the probate court, sitting as a juvenile court, may appeal to the district court under the provisions of section 260.06; and such appeal suspends the operation of the order appointing a guardian of the youth and committing him to the youth conservation commission until the appeal is determined or the district court disposes of the matter. OAG Aug. 25, 1948 (145-B-1).

### 260.065 JUVENILE COURT JUDGES, ANNUAL CONFERENCE

HISTORY. 1953 c 456 s 1-3.

### 260.07 WHO MAY FILE PETITION; REQUISITES

In dependency proceedings the jurisdiction is where the child is taken care of in a home and not in the county where its father and mother reside. OAG March 5, 1947 (268-H).

When the juvenile court, in dealing with an alleged delinquent child of the age of 12 years or more, decides that the child should be prosecuted under the statute or under an ordinance, the judge will direct the county attorney to institute such prosecution as may be appropriate. A complaint may be filed under the direction of the county attorney against the offender as in an ordinary criminal action. OAG July 9, 1951 (268-H).

An Indian woman enrollee of the Red Lake Indian Reservation gave birth to a male illegitimate child in Minneapolis. Paternity has not been established. Prior to 1942 the mother resided continuously on the Red Lake Indian Reservation, since which time she has spent considerable time in Chicago, Minneapolis, Red Lake, and Seattle. For five months prior to the birth of the child she resided in Minneapolis. An illegitimate child takes the status of the mother. The fact that the mother is an enrollee of the Red Lake Indian Reservation does not make her child a member of the tribe. The tribe is the sole judge of its membership. The interests of the child are paramount. Steps should be taken at once to preserve the rights of the child by having it included as a member of the Red Lake Indian tribe and this for the purpose of insuring to the child certain property rights and rights of inheritance. When the child becomes an enrollee of the Red Lake Indian Reservation, and assuming that the mother and child are not emancipated, both are wards of the federal government and under its exclusive guardianship and control and the state cannot interfere or impair such control in any way. OAG Aug. 30, 1948 (840-A-10).

An illegitimate child takes the settlement of its mother and upon the marriage of the mother both mother and child take the settlement of the husband; consequently, when a girl was committed from Mower county and thereafter gave birth to an illegitimate child which was placed in a boarding home and supported by Mower county, upon the release of the mother from incarceration and her marriage, a dependency action may be brought either in Mower county or in Freeborn county, the residence of the husband. OAG Aug. 26, 1947 (840-C).

### 260.08 CUSTODY; PROCEEDINGS

**HISTORY.** 1897 c 210 s 5; 1905 c 285 s 5; 1907 c 172 s 1; 1909 c 232 s 4; 1911 c 353 s 1; 1913 c 260 s 2; GS 1913 s 7166, 7181; 1917 c 397 s 8; GS 1923 s 8643; 1927 c 192 s 4; Ex1937 c 79 s 2; M Supp s 8643-1; 1941 c 158 s 1; 1945 c 517 s 3; 1951 c 224 s 1; 1953 c 159 s 1; 1953 c 219 s 1.

The problem of children in divorce proceedings. 32 MLR 766.

It is the duty of the county attorney to prepare petitions for commitment of feeble-minded, inebriate, or insane persons. There is no statutory provision requiring the probate court or the judicial court to assume any responsibility in connection with the petition under section 260.08. OAG June 9, 1948 (121-B).

In making commitment of a child as dependent, neglected, or delinquent, the presence of the infant child is not required in court at the time of the hearing. OAG March 13, 1952 (268-H).

Proceedings relating to the child of a female enrollee of an Indian reservation should be heard in the county of settlement of the child's parents unless the child was emancipated or unless it was determined to be in the best interest of the child that the petition be heard in the county where the child is present. OAG Sept. 8, 1948 (840-A-10).

### 260.09 PROBATION OFFICERS; DUTIES; COMPENSATION

A probation officer is appointed by the court and his duties are subject to control and direction of the court. The salary is fixed by the court with the approval of the county board and may be decreased during tenure. The officer may be removed at the pleasure of the appointing authority. The veterans preference law is not applicable. OAG March 20, 1952 (85-C).

Fees and expenses for transporting delinquent youths to a reception center of the youth conservation commission by a probation officer must be paid by the county upon proper certification by the judge; and in counties of 100,000 or less the fees and mileage for a probation officer is the same as that of a constable. OAG July 8, 1948 (268-F) (145-B-1) (390-C-12).

### 260.11 COMMITMENT; NOTICE

**HISTORY.** 1897 c 210 s 6, 7; 1905 c 285 s 7; 1909 c 232 s 6; 1913 c 260 s 2; GS 1913 s 7168, 7183; 1915 c 228; 1917 c 397 s 11; GS 1923 s 8646; 1935 c 82 s 1; Ex1937 c 79 s 3; M Supp s 8646-1; 1941 c 158 s 2; 1945 c 517 s 5; 1947 c 81 s 1.

Where minor children domiciled in Lyon county with parents, were placed in a home in Martin county after having been adjudged neglected children and their temporary custody placed in the Lyon county welfare board, the children retained the domicile of the father at the time the parents were found to have neglected them, and their constructive domicile in Lyon county, without actual physical presence therein, was sufficient to meet the requirements of being residents of Lyon county, and the probate court of Lyon county had jurisdiction of the proceedings for the appointment of a general guardian of the children. Where minors are abandoned by both parents they retain the domicile of their father at the time of their abandonment. Where venue does not affect the jurisdiction of the subject matter, a defective venue may be waived either by failing to object to the venue in the trial court or by seeking affirmative relief in alleged improper venue. The church welfare society which is organized for the purpose of aiding minor children and licensed by the state to place children in adopted homes and act as agent for the county welfare boards in caring for neglected and abandoned children, is a suitable and competent guardian for two neglected children. In re Kowalke's Guardianship, 232 M 292, 46 NW(2d) 275.

Parents who faithfully discharge their parental obligations to the full extent of their means and abilities are entitled to the custody of their children. In re adoption of Anderson, 235 M 192, 50 NW(2d) 278.

The fact that committal of an illegitimate child to a placement agency for adoption pursuant to the consent of the mother is a final adjudication of parental rights would not preclude the court, upon proper petition and in the exercise of a cautious and sound discretion, from restoring a child to the custody of the natural parents when restoration would promote the child's paramount welfare. In re adoption of Anderson, 235 M 192, 50 NW(2d) 278.

The director of public institutions has no authority to make a case settlement for the future support of an inmate in a state institution without the consent of the governor, the state auditor, and the state treasurer. He may accept a gift under the terms of section 7.09 but cannot make any agreement that would relieve persons responsible for paying the amount fixed by statute from additional contribution. OAG Aug. 5, 1948 (88-A-4).

A father deprived of custody cannot be charged with desertion or abandonment. To sustain the charge, proof must show wilful failure to support. Abandonment and failure to support are continuing offenses. Former conviction does not preclude prosecution for violation committed subsequently. OAG Dec. 19, 1950 (133-B-1).

In a matter relating to the custody of a dependent or neglected child the court makes an order of commitment. That order determines the director of social welfare to be the lawful custodian of the child. That carries with it the duty of the person in custody of the child at the time to hand the child over to the county welfare board. The law imposes that duty on the custodian. No other order is necessary. If delivery of the child is not made the director should make a demand upon the custodian to the place of detention of the child and, upon refusal by the custodian to deliver the child to the director, the custodian might be brought in for contempt of court. OAG Jan. 10, 1950 (840-A-9).

An Indian woman enrollee of the Red Lake Indian reservation gave birth to a male illegitimate child in Minneapolis. Paternity has not been established. Prior to 1942 the mother resided continuously on the Red Lake Reservation, since which time she has spent considerable time in Chicago, Minneapolis, Red Lake, and Seattle. For five months prior to the birth of the child she resided in Minneapolis. An illegitimate child takes the status of the mother. The fact that the mother is an enrollee of the Red Lake Indian Reservation does not make her child a member of the tribe. The tribe is the sole judge of its membership. The interests of the child are paramount. Steps should be taken at once to preserve the rights of the child by having it included as a member of the Red Lake Indian tribe and this for the purpose of insuring to the child certain property rights and rights of inheritance. When the child becomes an enrollee of the Red Lake Indian Reservation, and assuming that the mother and child are not emancipated, both are wards of the federal government and under its exclusive guardianship and control and the state cannot interfere or impair such control in any way. OAG Aug. 30, 1948 (840-A-10).

## **260.12 GUARDIANSHIP, ADOPTION**

**HISTORY.** Amended, 1951 c 223 s 1.

As to the consent of parents to adoption and the matter of notice to parents, the clerk should notify the parents (1) that the child has been finally committed to the guardian named and (2) that the parents will not receive notice of any adoption proceedings in the future. If the address of the parents is not known to the clerk, the clerk must follow the directions of the judge in giving notice. The action taken by the juvenile court is based upon evidence and is in no manner controlled by action thereafter to be taken. Giving notice could at most only affect subsequent procedure. The right of review of the court's decision might be affected. OAG June 10, 1952 (268-F).

Where the address of parents is unknown and the probate court is acting as a juvenile court and the notice of an order for final commitment is given by publication, the cost of such publication is payable by the county. OAG Jan. 2, 1952 (268-G).

Where a dependent and neglected minor was committed to temporary care and custody of B county welfare board and the minor's parents acquired settlement in D county after the minor's discharge from custody, the minor's settlement was that of his parents in D county. OAG Nov. 7, 1951 (339-D-4).

**260.125** Renumbered 242.01 to 242.37.

## **260.13 COURT; POWERS AS TO COMMITMENT, PAROLE, DISCHARGE**

**HISTORY.** Amended, 1951 c 459 s 3.

Procedural aspects of the Youth Conservation Act. 32 MLR 471.

The Youth Conservation Act does not prevent a person committed to the commission from petitioning the state board of pardons for a pardon. *State v Meyer*, 228 M 286, 37 NW (2d) 3.

The probate court having jurisdiction over the person of a child may determine that it is in its best interest to be placed in a suitable boarding home, and if such child has no legally responsible relatives able to pay for the cost of care, such cost becomes the responsibility of the county. OAG Oct. 5, 1953 (268-F).

## **260.14 COUNTY HOME SCHOOLS**

An institution which the board of county commissioners is authorized to establish with the approval of district judges and required to provide with necessary funds cannot be discontinued without the approval of the district judges. OAG Sept. 17, 1952 (125-A-38).

## **260.20 RELIGIOUS BELIEF OF PARENTS**

**HISTORY.** 1905 c 285 s 13; 1909 c 232 s 12; 1913 c 260 s 2; GS 1913 s 7174, 7189; 1917 c 397 s 20; GS 1923 s 8655; MS 1927 s 8655.

## **260.21 CRIMINAL PROCEEDINGS**

The adjudication of a juvenile court that a child is delinquent shall in no case be deemed a conviction of crime; but the court may in its discretion cause an alleged delinquent child of the age of 12 years or over to be proceeded against in accordance with the laws that may be in force governing the commission of and punishment for crimes and misdemeanors, or for the violation of municipal ordinances, by an order directing the county attorney to institute such prosecution as may be appropriated. Section 636.07 requires that the officer having charge of a minor delinquent under the age of 18 years shall provide a place of confinement separate from that wherein are grown-up prisoners and section 641.14 provides that no minor under 16 years of age shall be kept in the same room with other prisoners. Children under 12 years of age are presumed to be responsible for their acts and if convicted

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of a crime and in the absence of a legislative enactment prescribing or limiting the punishment, the punishment prescribed may be imposed upon them the same as upon adults. OAG July 7, 1953 (144-B-1).

Expenses incurred upon hearing in the juvenile court should be paid by the county. All fines and penalties recovered for violations of a city ordinance should be paid to city and not to county. OAG June 28, 1952 (199-B-5).

When a juvenile court in dealing with an alleged delinquent child of the age of twelve years or more decides that the child should be prosecuted under the statute or under an ordinance, the judge will direct the county attorney to institute such prosecution as may be appropriate. A complaint may be filed under the direction of the county attorney against the offender as in an ordinary criminal action. OAG July 9, 1951 (268-H).

A juvenile court judge has no authority to suspend or revoke a driver's license; but he has authority to recommend to the commissioner of highways the suspension of the license. OAG Oct. 11, 1949 (291-F).

Where a case involving a minor charged with the violation of a city ordinance is certified by the juvenile court back to the municipal court, and the matter is heard and disposed of by the municipal court, the city and not the county should pay the costs incurred. OAG July 14, 1952 (306-B-6).

### 260.22 TRANSFER OF CASES

When a person under 17 years of age is arraigned upon a criminal charge before a judge of the municipal court or a justice of the peace, otherwise than upon an order transferring a case from a juvenile court, the judge or justice transfers the case to the juvenile court. OAG April 21, 1952 (266-B-8).

A violation of a traffic regulation by a minor under 18 years of age, even though a misdemeanor, must be transferred to the juvenile court. OAG March 3, 1950 (268-F).

Where a complaint against the minor is issued out of the magistrate's court and that court transfers the case by means of a certificate, such certificate has the effect of a petition filed in the juvenile court. Since the petition originated in the proceedings in the juvenile court it does not charge a crime but merely informs the juvenile court that the child is delinquent. When the juvenile judge determines that the minor must be prosecuted for crime, a new complaint must be filed in the magistrate's court. OAG July 9, 1951 (268-H).

The county is not responsible for the costs of the prosecution of a minor for a violation of a city ordinance after a hearing in juvenile court. OAG July 14, 1952 (306-B-6).

Section 260.22 does not apply to persons over 18 years of age. OAG Jan. 15, 1948 (632-B-2).

### 260.25 SUPPORT BY PARENTS

The probate court having jurisdiction over the person of a child may determine that it is in its best interest to be placed in a suitable boarding home, and if such child has no legally responsible relatives able to pay for the cost of care, such cost becomes the responsibility of the county. OAG Oct. 5, 1953 (268-F).

### 260.27 CONTRIBUTING TO NEGLECT OR DELINQUENCY

HISTORY. 1917 c 397 s 27; 1927 c 142 s 7; MS 1927 s 8602; 1953 c 436 s 1.

Problem of children in divorce proceedings. 32 MLR 766.

### 260.29 EXPENSES PAYABLE BY COUNTY

HISTORY. 1909 c 232 s 14; 1913 c 260 s 2; GS 1913 s 7191; 1917 c 397 s 29; GS 1923 s 8664; MS 1927 s 8664; Ex1937 c 79 s 4; M Supp s 8664-1; 1941 c 158 s 4; 1947 c 287 s 1.

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Where the address of parents is unknown and the probate court is acting as a juvenile court and the notice of an order for final commitment is given by publication, the cost of such publication is payable by the county. OAG Jan. 2, 1952 (268-G).

Laws 1947, Chapter 287, relates to mileage for use of officers automobile when serving notice, subpoenas and the like as an officer of the juvenile court, in counties of less than 50,000 inhabitants. The mileage charge must not exceed five cents per mile. OAG Jan. 25, 1948 (390-A-11).

## 260.32 SALARIES

Fees and expenses for transporting delinquent youths to a reception center of the youth conservation commission by a probation officer must be paid by the county upon proper certification by the judge; and in counties of 100,000 or less the fees and mileage for a probation officer is the same as that of a constable. OAG July 8, 1948 (268-F) (145-B-1) (390-C-12).

If the probation officer is directed by the court to transport a delinquent child to a reception center operated by the youth conservation commission, the fees and expenses of the transporting officer should be paid by the county on the judge's order. OAG July 8, 1948 (145-B-1) (268-F) (390-C-12).

## 260.35 TESTS, EXAMINATIONS

HISTORY. 1925 c 303 s 2; MS 1927 8689-2; 1941 c 159 s 2.

## 260.36 SPECIAL PROVISIONS IN CERTAIN CASES

HISTORY. 1925 c 303 s 2; MS 1927 s 8689-2; 1941 c 159 s 3.

Where the juvenile court had committed a dependent and neglected child to the guardianship of the director of social welfare, the director has the power to transfer the child to a state hospital for psychopathic examination and treatment. OAG April 14, 1948 (88-A-26).

## 260.37 GUARDIANSHIP CEASES UPON MAJORITY

HISTORY. 1885 c 146 s 12; GS 1878 Vol 2 (1888 Supp) c 36 s 194; 1889 c 167 s 3; GS 1894 s 3510; RL 1905 s 1945; GS 1913 s 4161; 1917 c 214 s 2; GS 1923 s 4620; 1925 c 303 s 3; MS 1927 s 4620, 8689-3; 1941 s 159 s 4.

## 260.38 COST, PAYMENT

HISTORY. 1925 c 303 s 5; MS 1927 s 8689-5; 1941 c 159 s 5; 1947 c 81 s 2; 1953 c 54 s 1.

In committing a child as dependent, neglected, or delinquent, the county of commitment reimburses the director of social welfare for his disbursements. OAG March 13, 1952 (268-H).

Laws 1953, Chapter 592, establishes a revolving fund. From this fund the cost of care and support of children under guardianship of the commissioner of public welfare is paid. The revolving fund is reimbursed by payments by counties under the provisions of section 260.38. If a county fails to make such required payment, the commissioner may withhold from funds due such county for any other purpose such amount as will pay the same. OAG Nov. 9, 1953 (840-A-7).

## 260.39 DISTRIBUTION OF FUNDS RECOVERED FOR ASSISTANCE FURNISHED

HISTORY. 1953 c 95 s 1.

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## RECEIVING HOME

### 260.41 MINNESOTA STATE CHILDREN'S CENTER

HISTORY. 1953 c 701 s 1.

### 260.42 CONTROL, MANAGEMENT

HISTORY. 1953 c 701 s 2.

### 260.43 SUPERINTENDENT

HISTORY. 1953 c 701 s 3.

### 260.44 PERSONS ADMITTED

HISTORY. 1953 c 701 s 4.

### 260.45 COSTS, PAYMENT

HISTORY. 1953 c 701 s 5.

### 260.46 ACQUISITION OF LAND FOR USE AS CENTER

HISTORY. 1953 c 701 s 6.

## RELIEF OF POOR

### CHAPTER 261

## GENERAL PROVISIONS

### 261.01 SUPPORT OF POOR; LIABILITY OF RELATIVES

When a married couple dies in a common disaster and there is no proof available that one survived the other, the rights to recovery under M.S.A., Section 573.02 are to be determined as if death occurred to both at the same instant. The damages awarded are not so excessive as to require either reduction or a new trial. That a child has married does not annul the liability under section 261.01 nor relieve the wrongdoer under section 573.02. *Moore v Palen*, 228 M 148, 36 NW(2d) 540.

Where the juvenile court committed a minor to the custody of the home school for girls, in Stearns county, and the commitment was still in effect, and there was no showing that the minor's mother who had left the state had gained a new residence elsewhere, the minor had a legal domicile in the same county as the mother had before she left the state. OAG Feb. 2, 1950 (268-H).

While certain relatives named in section 261.01 have such liability, the statute imposes no liability on the wife for support of a pauper husband. OAG Feb. 26, 1948 (339-N).

Where a county operates under the county system, if a pauper is hospitalized the hospital is entitled to the reasonable value of services rendered. OAG Nov. 28, 1951 (1001-D).

### 261.02 FAILURE TO SUPPORT; RECOVERY FROM RELATIVE

Where a village acted as a mere volunteer in giving care and support to a person whose settlement was in a certain township and there being no emergency, the township should have been notified of the paupers' need and requested to assume responsibility. The law distinctly says "after like notice." OAG Oct. 20, 1949 (339-O-5).