

lie to compel county commissioners to provide quarters for a certain municipal court where the statutes creating said court require that the council of the city "shall furnish suitable accommodations for the municipal court", the inference being that where the legislature has imposed a duty upon a municipality it must perform the duty and another political subdivision, although interested in its performance, may not be compelled by a writ of mandamus to perform the duty.

Applying the rule of construction as above discussed to the word "may" as used in the section in question, the conclusion is impelled that the council of a municipality must provide suitable quarters for the board of health of a city health district and consequently a city board of health has no authority to rent the same.

Respectfully,
GILBERT BETTMAN,
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3990.

DISPOSITION OF FINES—MINOR UNDER EIGHTEEN TRIED IN
JUVENILE COURT FOR VIOLATION OF FISH AND GAME LAWS—
SECTION 1445, G. C., INAPPLICABLE.

SYLLABUS:

The provisions of section 1445, General Code, are not applicable to a proceeding had in a juvenile court against a minor offender under the age of eighteen years, who is charged with violating the fish and game laws of this state.

COLUMBUS, OHIO, January 25, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from the Division of Conservation, which reads as follows:

"We have several cases where juvenile offenders, tried before Juvenile Courts for violations of the fish and game laws, have been guilty and sentenced to fines and costs.

The fines and costs in such cases having been collected by such Juvenile Courts and said courts have not paid the fines collected into the Conservation office, the court claiming said fines should be turned into the County Treasurer's office, stating such cases as county cases. Affidavits were filed by regular Game Protectors and prosecution was made under our fish and game laws.

The question now arises: 'Should such fines collected by Juvenile Courts be turned into the office of the Conservation Commissioner, or should same be turned into the County Treasury?'"

By virtue of the provisions of section 1445, General Code, all fines arising by reason of a conviction of a person violating the fish and game laws of this state are payable to the conservation commissioner, who, in turn, pays the same into the state treasury. Section 1445 reads in part as follows:

"All fines, penalties and forfeitures arising from prosecution, convictions, confiscations, or otherwise under this chapter unless otherwise directed by the conservation council shall be paid by the officer by whom the fine is collected to the conservation commissioner and by him paid into the state treasury to the credit of a fund which shall be appropriated biennially for the use of the conservation commissioner."

The first question arising as a result of the above inquiry is whether or not a minor under eighteen years of age can be tried by the juvenile court for a violation of the fish and game laws of this state. The following sections and parts of sections are pertinent to the question raised. Section 1642 reads in part as follows:

"Such courts of common pleas, probate courts, insolvency courts and superior courts within the provisions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years, * * *."

Section 1644 reads in part as follows:

"For the purpose of this chapter, the words 'Delinquent child' includes any child under eighteen years of age who violates a law of this state, or a city or village ordinance, or who is incorrigible; * * * A child committing any of the acts herein mentioned shall be deemed a juvenile delinquent person, and be proceeded against in the manner hereinafter provided."

Section 1647 reads as follows:

"Any person having knowledge of a minor under the age of eighteen years who appears to be either a delinquent, neglected or dependent child, may file with such juvenile court a complaint, sworn to, which may be upon information and belief, and for that purpose such complaint shall be sufficiently definite by using the word delinquent, or dependent, as the facts may be."

Section 1659 reads as follows:

"When a minor under the age of eighteen years is arrested, such child, instead of being taken before a justice of the peace or police judge, shall be taken directly before such juvenile judge; or, if the child is taken before a justice of the peace or a judge of the police court, it shall be the duty of such justice of the peace or such judge of the police court, to transfer the case to the judge exercising the jurisdiction herein provided. The officers having such child in charge shall take it before such judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before the judge in the first instance."

Section 1683-1 reads in part as follows:

"The judge designated to transact the business arising under the jurisdiction conferred in this chapter shall have jurisdiction of all misdemeanors against minors, * * *"

In the case of *Wilson, Sheriff, vs. Lasure*, 36 O. App. 107, the court, at page 115 therein, in construing section 1683-1, said the following:

"It is apparent from a close examination of Section 1683-1 that the juvenile court is limited to prosecution on affidavit of all misdemeanors against minors and of certain offenses prescribed therein against adults."

Inasmuch as the court in that case held that the juvenile court has jurisdiction of all misdemeanors committed by a minor under the age of eighteen years, the only question that remains is whether or not a minor under eighteen years of age is tried as a delinquent for having committed a misdemeanor or is tried for a violation of the misdemeanor itself.

On a reading of the juvenile act, sections 1639 to 1683-1, inclusive, one is impressed with the fact that it was the intention of the legislature in creating the juvenile court to provide a tribunal which would be able to deal with delinquent, neglected or dependent children and that the proceedings therein against a juvenile offender were for the purpose primarily of reformation. In other words, the procedure in the juvenile court, as far as the juvenile offender is concerned, is not of a criminal nature, that is, the juvenile offender is not to be tried for the misdemeanor that he committed but rather as a delinquent for having committed a misdemeanor. This conclusion finds support particularly in sections 1648-1, 1649, 1650, 1652 and 1659. Section 1650 reads as follows:

“On the day named in the citation or upon the return of the warrant of arrest, or as soon thereafter as may be, the judge shall proceed, in a summary manner to hear and dispose of the case, and the person arrested or cited to appear may be punished in the manner hereinafter provided.”

The provisions of the section last quoted clearly indicate that the proceedings had against a juvenile offender in a juvenile court are not criminal since the legislature has provided that such hearings shall be summary in their nature.

If a minor offender under eighteen years of age were tried in a juvenile court for a violation of a criminal law, as such, he would be entitled to certain constitutional rights such as a speedy public trial and a trial by jury if the punishment were imprisonment. However, these constitutional guarantees are not available when a minor offender is tried on a charge of delinquency as a result of having committed a misdemeanor, since, in that event, he is not being tried for the violation of a criminal law but is being heard on the question of whether or not he is a delinquent within the meaning of section 1644, which proceeding is a summary one (section 1650) without the benefit of a public trial or a jury.

Even the language of the court in the case of *Wilson, Sheriff, vs. Lasure, supra*, quoted herein, would indicate that the court in that case merely intended to say that the juvenile court has jurisdiction of all minors under eighteen years of age who commit misdemeanors and that such juvenile offenders can not be heard by any court other than the juvenile court. However, the court in that case did not say that a minor misdemeanant was to be proceeded against in the juvenile court for having committed a misdemeanor. The court did say that the juvenile court was for the purpose of reformation and not for the punishment of a minor offender for his criminal offenses, as is evident from the following:

“This court holds the view that it was the intention of the Legislature in the enactment of this provision that the juvenile court might inquire into any charge lodged with it against a minor without the formality of causing an information to be filed against him in order that the minor’s correction might be quietly effected, the public not informed of his misconduct, and the child not to be made the subject of public ridicule. It was a wise provision in accordance with the recent

and more sensible theory that it is best in the case of the young and erring minor rather to correct without public display than to punish openly and be led thereby into a life of crime."

The language just quoted clearly indicates that a proceeding against a minor in a juvenile court is not a criminal proceeding, because, as heretofore stated, a person tried for a violation of a criminal law is entitled to a speedy public trial and to be heard by a jury if the punishment for the crime is imprisonment, which would not coincide with the statement made by the court relative to the nature of the proceedings had in a juvenile court hearing against a juvenile offender.

The purpose of a juvenile court is probably best stated in the case of *State vs. Reed*, 218 N. W. 609 (Iowa), wherein the court said that:

"Juvenile courts are generally intended as a part of the system dealing with delinquent, neglected or dependent children, under the theory that they are wards of the state, and, under proper systems, to save them from the stigma of conviction for crime. In other words, the purpose of this court is not to punish but to protect."

The court in the case of *State vs. Malone*, 100 So. 788 (La.), said that the purpose of the juvenile court was as follows:

"The delinquent child is not to be punished, but he is nonetheless to be reformed; and that reformation is to be under the eye of the juvenile court."

To the same effect is the following in the case of *Matingly vs. Commonwealth*, 188 S. W. 370, at page 371 (Ky.):

"The very purpose of this law as has been declared by this court upon more occasions than one, is to provide for the protection and care of juvenile offenders in a humanitarian effort to prevent them from becoming outcasts and criminals rather than to inflict punishment for their delinquencies."

In the case of *Bryant vs. Brown*, 118 So. 184 (Miss.), the court held that a delinquency proceeding was a civil and not a criminal proceeding and that therefore a jury trial was not required in such a proceeding. See also *State vs. School*, 167 N. W. 831 (Wis.); *Klopner vs. State*, 189 S. W. 268 (Tex.); *State vs. Coble*, 107 S. E. 132 (N. C.).

In the case of *Ex parte Januszewski*, 196 Fed. 123, the court held that the juvenile act of Ohio did not make or declare delinquency a crime and that therefore a minor offender heard before a juvenile court was not entitled to a jury trial. The second paragraph of the syllabus reads in part as follows:

"The purpose of the Juvenile Act (Gen. Code Ohio, secs. 1639-1683), regulating the treatment and control of delinquent children, giving juvenile courts jurisdiction over delinquent children, defining a delinquent child as any child under 17 years of age who violates a law of the state, and providing for proceedings by affidavit and for commitment of de-

linquent children to the industrial school, the object of which is the reformation of its inmates as declared by sections 2083 and 2094, is to save children under the age of 17 years from conviction of crimes, and under it the state acts as a guardian of delinquent children, and the act is but an administrative police regulation, * * *."

The court in the case of *State vs. Joiner*, 20 O. N. P. (N. S.) 313, follows the other authorities cited herein in respect to the purpose of the juvenile court act, as is evident from the following statements made by the court in the course of its opinion:

"Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal nor penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of the crime may set the machinery of the juvenile court in motion the accused was not tried in that court for his crime but for incorrigibility."

Also at pages 318 and 319:

"When a child under eighteen years of age has been by the juvenile court found to be a delinquent child as defined by the juvenile court act, and the juvenile court further finds that said delinquency is grounded in a felony, the delinquent child is dealt with on account of being found to be a delinquent child and is not punished under our criminal laws for the felony out of which the delinquency sprang unless the juvenile judge in the exercise of his discretion binds the defendant child over to the common pleas court as provided by Section 1681 of this act." See also the Opinions of the Attorney General, 1918, page 840.

I have assumed, for the purpose of this opinion, that the hearing referred to in the letter herein quoted was on a complaint charging the minor with being a delinquent child by reason of having violated the fish and game laws of this state, and that the fine and costs imposed on the minor by the juvenile court were by virtue of that part of section 1654 which reads as follows:

"If in his judgment it is for the best interest of a delinquent minor, under the age of eighteen years, the judge may impose a fine upon such delinquent not exceeding ten dollars, and he may order such person to stand committed until fine and costs are paid."

This assumption may be properly made in view of the recent decision of the Court of Appeals in Guernsey County, Ohio, in the unreported case of *Industrial Commission of Ohio vs. English*, Case No. 199, wherein the court said that a "Presumption may be indulged in that the proceedings of the court were regular and proper unless affirmatively shown to be otherwise". If, on the other hand, as stated in the letter quoted herein, the juvenile court tried and sentenced the minor for committing a misdemeanor which the court had no jurisdiction to do, then, even in that event, the conservation commissioner would not be entitled to the fine and costs imposed by the juvenile court upon the minor. See *State vs. Nast*, 108 S. W. 563 (Mo.). In other words, it may be contended that even though the juvenile court had no authority to try the minor for a misdemeanor, nevertheless the fine imposed by the juvenile court for the violation of the fish and game stat-

utes should be paid to the conservation commissioner as is provided for by section 1445. The case of *State vs. Nast, supra*, answers that contention. The court in that case held that a board of education which was entitled to all fines collected for the breach of penal laws could not compel the payment of fines imposed and collected by a court which had no jurisdiction to try criminal cases, the fines of which were to go to the board of education. The second paragraph of the syllabus reads as follows:

“Const. art. 11, sec. 8 (Ann. St. 1906, p. 299), provides that the clear proceeds of all fines collected in the several counties for any breach of the penal laws shall belong to the public schools of the several counties. Held, that a law directing the clerk of a lawfully constituted court to pay all fines into the city treasury is unconstitutional; but, if the court is not lawfully constituted, a board of education cannot compel payment to it of the finest collected.”

It is therefore apparent that although the juvenile court has exclusive jurisdiction of minor offenders under the age of eighteen years for misdemeanors committed by them, nevertheless the proceedings against such minor offenders in the juvenile court are not of a criminal nature but are rather delinquency proceedings arising from the commission of a misdemeanor. That being so, a minor offender charged with violating the fish and game laws of this state is not tried by the juvenile court for violating the fish and game laws, as such, but is tried instead for delinquency as a result of having committed a misdemeanor. Since a delinquency proceeding is not a criminal proceeding the provisions of section 1445, General Code, do not apply in such a case.

Therefore, in specific answer to your question, it is my opinion that the provisions of section 1445, General Code, are not applicable to a proceeding had in a juvenile court against a minor offender under the age of eighteen years, who is charged with violating the fish and game laws of this state.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3991.

PUBLIC CONTRACT—TRANSPORTATION OF SCHOOL PUPILS—BOARD OF EDUCATION MAY MODIFY OR CHANGE SUCH CONTRACT IF CHANGED CONDITIONS SO WARRANT.

SYLLABUS:

Where a board of education enters into a contract for the transportation of pupils within the district, and later a bridge is removed by the State Highway Department along the route to be traveled in the transportation of said pupils thus necessitating a long detour in the carrying out of said contract, which facts were not foreseen at the time of originally entering into the contract, the board of education may lawfully modify the said contract and pay to the said contractor an additional sum in consideration of the additional service which must be rendered in the carrying out of said contract.