

3159.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO—
\$2,000.00.

COLUMBUS, OHIO, September 4, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3160.

CHILDREN'S HOME—JURISDICTION UNAFFECTED BY MARRIAGE OF
WARD WHEN—JUVENILE COURT JURISDICTION CONTINUES.

SYLLABUS:

1. *When a child, either boy or girl, is committed to the children's home by a Juvenile Court permanently, and such child at the age of nineteen years, while in the care and custody of the trustees of the children's home, marries, the marriage does not release the child from the guardianship of the trustees of the children's home.*

2. *When either a boy or girl is temporarily committed to the children's home by the Juvenile Court, their marriage at the age of nineteen, while in the custody of the trustees of the children's home, does not affect the jurisdiction of the Juvenile Court over them and their status is not affected in any way whatsoever as wards of the Court.*

COLUMBUS, OHIO, September 5, 1934.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“We would appreciate having your official opinion on the following state of facts:

(a) A boy or girl is committed to our County Children's Home by the Juvenile Court as a permanent commitment. Supposing that the boy or girl while in the care and custody of the Children's Home and at the age of nineteen years marries. Does the marriage ipso facto emancipate the boy or girl from the care and custody of the Home?

(b) Under the same set of facts, supposing that the commitment is a temporary one. What effect, if any, does the marriage have upon the status assuming that the marriage occurs while the ward is under the age of twenty-one years?

Our Montgomery County Children's Home has several cases involving that question, and we shall appreciate your early opinion on the subject.”

Section 1643, General Code, provides in part:

“When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall

continue for all necessary purposes of discipline and protection, a ward of the court, until *he or she attain the age of twenty-one years*. The power of the court over such child shall continue until the child attains such age. Provided, in case such child is committed to the *permanent care* and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment. * * *” (Italics the writer’s.)

Section 1653, General Code, provides in part:

“When a minor under the age of eighteen years, or any ward of the court under this chapter, is found to be dependent or neglected, the judge may make an order committing such child to the care of the Children’s Home if there be one in the county where such court is held, if not, to such home in another county, if willing to receive such child, for which the county commissioners of the county in which it has a settlement, shall pay reasonable board; * * *”

Section 1677, General Code, provides inter alia:

“If the court awards a child to the care of an institution, association, or a state board in accordance with the provisions of this and other chapters, the judge shall in the award or commitment designate whether it is for temporary or permanent care and custody. If for temporary care, the award or commitment shall not be for more than twelve months, and before the expiration of such period the court shall make other disposition of the matter, or recommit the child in the same manner. During such period of temporary care the institution, association or state board to which such child is committed shall not place it in a permanent foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct. * * * Whenever a child is committed to the permanent care of an institution, association or a state board, it shall ipso facto come under *the sole and exclusive guardianship of such institution, association or state board, whereupon the jurisdiction of the court shall cease and determine*, except that such institution, association or board, to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects. * * *” (Italics the writer’s.)

Section 3093, General Code, provides in part:

“All wards of a county or district children’s home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the *permanent care* of such home, or who have been by the parent or guard’an voluntarily surrendered to such an institution or agency, *shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age*. * * * Children committed

for temporary care or received by arrangement with parent or guardian shall be considered under the custody and control of the trustees only during the period of such temporary care, except as hereinafter provided. * * * (Italics the writer's.)

These statutes expressly state that whether a commitment be temporary or permanent, the child shall continue to be the ward either of the court or trustees of the institution until such child becomes twenty-one years of age. That the same rule applies to both males and females is shown by section 1643, General Code, which states that the child shall continue a ward of the court "until he or she attain the age of 21 years."

Section 10507-20, General Code, being a part of the new Probate Code of Ohio, provides:

"The marriage of a ward, if a female, shall determine the guardianship as to the person, but not as to the estate of such ward."

It appears that either this section (10507-20) is in conflict with the above quoted statutes, and being enacted later should prevail, or that such section modifies the plain provisions of the sections dealing with neglected or dependent children. However, section 10507-20 applies only to guardians appointed by the Probate Court. In fact, section 10507-1 defines the term "guardian." This section reads in part as follows:

"As used in this act:

The term 'guardian' means any person, association or corporation (other than a guardian under the uniform veterans' guardianship act) appointed by the probate court to have the care and management of the person, or of the estate, or both, of a minor, incompetent, habitual drunkard, idiot, imbecile or lunatic, or of the estate of a confined person.

The term 'ward' means any person for whom a guardian as herein defined is acting.

The term 'resident guardian' means a guardian appointed by a probate court in this state to have the care and management of property in Ohio belonging to a non-resident ward."

By express provision, therefore, the term "guardianship" as used in section 10507-20 refers only to guardians appointed by the Probate Court, and cannot apply to an entirely different part of the Code which relates to guardianships created by statute and by order of court in pursuance of such statutory authority. The latter guardianships are a different kind than the ordinary guardianships, as they embrace a broader degree of custody and control over the person of the ward. Section 10507-20 was formerly section 10929, General Code, and prior to that was section 6265 of the Revised Statutes. It is found in both the Revised Statutes and the General Code as part of the title relating only to guardians and trustees under the control of the Probate Court, and so would be construed to apply only to the type of guardianships which is dealt with therein.

In the case of *Street Railway Company vs. Pace*, 68 O. S. 200, the court construed the statute which provided that "The same court shall not grant more than one new trial on the weight of the evidence against the same party in the same case." While the words of this statute alone do not limit its application to any

particular courts, the court pointed out that it is found in Revised Statutes under Chapter 5, Division 3 of title 1, which title is denominated: "Procedure in the common pleas courts, and in the circuit courts on appeal." The court said on page 204:

"* * while its position and place under this title is not necessarily conclusive or controlling in its interpretation, it is nevertheless significant as an aid in determining the intent and purpose of the legislature as to its scope and operation, and as to the courts to which its provisions should apply, and having been placed under this title instead of under title IV, which latter title is designated: 'Procedure in the Supreme Court, circuit courts and common pleas courts, as courts of error,' would seem to evidence an understanding and purpose on the part of the legislature that it should have effect and application as to circuit courts, only when sitting as courts of appeal or trial courts."

It is my opinion then that section 10507-20, General Code, has no application to this case. Therefore, when a child, either boy or girl, is committed to the children's home by a Juvenile Court permanently and such child at the age of nineteen years while in the care and custody of the trustees of the children's home, marries, the marriage does not release the child from the guardianship of the trustees of the children's home.

I come now to a consideration of your second inquiry which involves the temporary commitment of minor wards to the children's home. You ask what effect the marriage of such wards, while under the age of twenty-one, will have as to their status.

It should be noted in the statutes above quoted that as contrasted to permanent commitments, temporary commitments do not affect the jurisdiction of the Juvenile Court, and consequently such jurisdiction is a continuing one and that at no time is the child outside the jurisdiction of the Juvenile Court while temporarily in the custody of the trustees of the children's home.

It was held in *Re Hook*, 95 Vt. 497, 115 Atl. 730, 19 A. L. R. 610, that where the state once assumes control of a delinquent or neglected child, its authority is not ousted by the marriage of the child. It was also held in *State, ex rel. Foot, vs. District Court*, 77 Mont. 290, 150 Pac. 973, 49 A. L. R. 398, that the fact that an infant is married has no effect on the Juvenile Court's jurisdiction over her. See also in *Re Lundy* 82 Wash. 148, 143 Pac. 885, Ann. cases 1916E, 1007; *Stoker vs. Gowans*, 45 Utah 556, 147 Pac. 911; *Ex Parte Drye—Mich.* 229 N. W. 623; *Ex Parte Packer—Ore.* 298 Pac. 234; *Phillips vs. State—Tex. Crim.* 20 S. W. 2d 790. For two valuable notes collating the authorities affecting the jurisdiction of Juvenile Courts over delinquents upon marriage, see 19 A. L. R. 616, and 49 A. L. R. 402.

It must be noted that all the cases cited except one, in *Re Hook*, supra, involve delinquent rather than dependent or neglected children, but the underlying reasoning of the child's welfare is applicable to dependent and neglected cases as well as delinquent cases. In *Re Hook*, supra, involved the following state of facts: A child of thirteen years of age was committed by the Hartford Juvenile Court to the custody of the State Board of Charities and Probation as a neglected and dependent child. The child was then placed by the Board in a family in the town of Concord, where she remained for a few weeks. After getting the consent of her father, she married. After her marriage, the probation officer caused her to be brought before the Juvenile Court on a petition alleging that

she was insubordinate and she was adjudged a delinquent by the court and ordered committed to an industrial school. The court in the case of *in Re Hook* held that the Juvenile Court exceeded its authority when it committed her to an industrial school, saying that a single act of disobedience did not make the child incorrigible or delinquent. The court discharged her from the industrial school but remanded her to the custody of the Board of Charities and Probation. It was stated in the course of the opinion, 115 Atl. 730 at pages 731, 732 and 733, as follows:

"* * * The welfare of the child lies at the very foundation of the statutory scheme, and, from the moment that the court determines that a child comes within the classes specified therein, he becomes a ward of that court, and so continues until he attains his majority, unless sooner 'discharged' as provided in said chapter, G. L. 7323.

When a child is awarded to the care of the board of charities and probation, he becomes a ward of that board (G. L. 7330), and is 'discharged' within the meaning of G. L. 7323. That is to say, he passes out of the immediate control of the court. But the term 'discharged' as used in the latter section, does not mean an absolute and permanent release from the court's control. The award to the board is so far conditional that the court retains jurisdiction to make such further orders as future conditions may require; and to this extent the guardianship of the board is subservient to the paramount authority of the court. Any other construction would tend to subvert the fundamental purpose of the statute. This authority of the court is not lost or exhausted, though the child be committed to a person or institution outside its territorial jurisdiction. In *re Chartrand*, 103 Wash. 36, 173 Pac. 728. * * *

When this marriage took place, then, this child was the ward of the board of charities and probation, and subject to the control of the Hartford juvenile court. Did her marriage, in and of itself, release her from this situation? The importance of this question is fully appreciated. It involves, on the one hand, the power and authority of the state, under chapter 319, while acting as *parens patriae* in the discharge of most serious and essential civic obligations, and, on the other, of interests vitally affecting the most sacred and important of the domestic relations. The petitioner insists that this guardianship of the state was and could be of no higher character than one created by appointment of the probate court, or one arising from the parental relation, either of which would be discharged by the marriage—the one by force of G. L. 3718, and the other by force of *Sherburne vs. Hartland*, 37 Vt. 528, and other cases.

With this contention we cannot agree. On the contrary, we think that when the state once assumes control of such a child as the statute describes its authority is and continues to be superior to any other, no matter what the latter may be—even that under a retained jurisdiction of another court in prior divorce proceedings between his parents. In *re Hosford*, 107 Kan. 115, 190 Pac. 765, 11 A. L. R. 142, and note. The welfare and best interests of the child become the paramount and controlling consideration, and, before the state can be compelled to relinquish its control, it must be made to appear in some legal way that these considerations require it. * * *

From a careful consideration of the question in the light afforded by the cases referred to, we conclude that the jurisdiction of the Hart-

ford juvenile court was not affected by this child's marriage, and that thereafter that court could lawfully take such action with reference to her discipline and control as the circumstances warranted. * * *"

In my opinion the marriage of a boy or girl who has been temporarily committed to the County Children's Home by the Juvenile Court has no effect whatsoever upon the status of such children. If the marriage of such children under temporary commitment to the children's home had the result of making them in fact no longer dependent or neglected within the meaning of the statutes above quoted, then application should be made to the Juvenile Court which committed them to the institution for modification of the order of commitment.

Specifically answering your questions, it is my opinion that:

1. When a child, either boy or girl, is committed to the children's home by a Juvenile Court permanently, and such child at the age of nineteen years, while in the care and custody of the trustees of the children's home, marries, the marriage does not release the child from the guardianship of the trustees of the children's home.

2. When either a boy or girl is temporarily committed to the children's home by the Juvenile Court, their marriage at the age of nineteen, while in the custody of the trustees of the children's home, does not affect the jurisdiction of the Juvenile Court over them and their status is not affected in any way whatsoever as wards of the Court.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3161.

APPROVAL—RESERVOIR LAND LEASE AT BUCKEYE LAKE FOR THE RIGHT TO USE AND OCCUPY FOR COTTAGE SITE AND DOCK-LANDING PURPOSES—JOHN C. SCHMITT, COLUMBUS, OHIO.

COLUMBUS, OHIO, September 5, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks of the Division of Conservation in your department, submitting for my examination and approval a reservoir land lease, in triplicate, executed by the Conservation Commissioner, under the authority of section 471, General Code, to one John C. Schmitt of Columbus, Ohio.

This lease, which is one for a stated term of fifteen years, and which provides for an annual rental of \$36.00, payable semi-annually, grants and demises to the lessee above named the right to occupy and use for cottage site and dock-landing purposes, the inner slope and waterfront and the outer slope of the westerly embankment of Buckeye Lake extending back to the outer margin of the borrow pit adjacent thereto that is included in the whole of Embankment Lot No. 50, south of Lakeside, as laid out by the Ohio Canal Commission in 1905.