

property in the state, so that the state is the taxing district though the distribution is by counties. \* \* \*

There is one additional sense in which the levy in question is clearly a state levy, that is, that it is made directly by law. Section 7575 is not a law authorizing the making of tax levies, it is a law making tax levies. The general assembly is the levying body in the same sense in which county commissioners, for example, are the levying body for county taxes. The clerical work of extending the levy must be done by the county auditor in the one case the same as in the other, but the levying power proper is exerted by the legislative body of the state in the one case and by the administrative authority of the county in the other."

Even the purpose of the tax is not a county purpose or a county school district purpose; it is a state purpose. In that sense, of course, all school taxes may be said to be for a state purpose, but local school taxes are levied by local school authorities for the purposes of their respective school districts, whereas this tax is levied by the state, to be distributed by a civil subdivision of the state, or rather retained in the civil subdivisions of the state known as counties, which are not subdivisions devoted strictly to school administration.

For myself, I can see little, if any difference between a levy made by the state for state common school purposes and a levy made by the state, to be retained in the several counties for the support of the schools therein for the purpose of affording the advantages of a free education to all the youth of the state, and I am accordingly of the opinion that this tax is a state tax and that the lands vested in the board of trustees of Miami University by authority of the act of the legislature creating said university and vesting certain lands in the trustees of said university for the use of the university are exempt from the levy of 2.65 mills, provided for by Section 7575, General Code, and that the Auditor of Butler County is not authorized to levy and collect this tax from the lessees of these lands.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2840.

JURISDICTION OF COURTS—WHEN A FEMALE CONTRIBUTES TO THE DELINQUENCY OF A MINOR—WHETHER SUCH VIOLATION CONSTITUTES A FELONY OR MISDEMEANOR—INCARCERATION OF SUCH PRISONER AFTER BEING SENTENCED.

*SYLLABUS:*

1. *A court exercising jurisdiction as a "juvenile court" does not have authority to try and sentence a female charged with a felony and therefore can not lawfully sentence a female to the Ohio Reformatory for Women.*
2. *Contributing to delinquency of a minor, as defined in Section 1654, of the General Code, is a misdemeanor and a person found guilty of a violation of its provisions can not lawfully be sentenced to the Ohio Reformatory for Women.*
3. *The court of common pleas, by virtue of the provisions of Section 13422-5 of the General Code, has final jurisdiction in felony cases and may try and sentence a female for a violation of Section 13008, which is a felony, to the Ohio Reformatory for Women.*

4. A judge of the court of common pleas, division of domestic relations, when exercising jurisdiction as a common pleas judge, may lawfully try a female charged in an indictment returned by a grand jury for a violation of Section 13008, and upon conviction may sentence said female to the Ohio Reformatory for Women.

5. A judge of the court of common pleas, division of domestic relations, when exercising jurisdiction as a judge of the juvenile court, does not have authority to lawfully sentence a female to the Ohio Reformatory for Women.

6. Where a sheriff delivers a prisoner to the superintendent of the Ohio Reformatory for Women and the copy of the sentence delivered to the superintendent shows fairly upon its face that the prisoner was sentenced for a misdemeanor, the superintendent should refuse to receive such prisoner. However, where the copy of the sentence includes a description of the offense with reasonable certainty and shows upon its face that the court had jurisdiction of the offense and the person, but fails to show whether or not the prisoner was sentenced for a felony or a misdemeanor, the superintendent of the Ohio Reformatory for Women should receive such prisoner.

COLUMBUS, OHIO, January 19, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a letter of recent date from your predecessor, which is as follows:

“We respectfully request your opinion on the following questions.

(1) May a woman be legally admitted and held at the Ohio Reformatory for Women on commitment by a Juvenile Court?

(2) Has any court jurisdiction to sentence to the Ohio Reformatory for Women a woman convicted of ‘contributing to delinquency’?

(3) Section 13008 provides—‘Whoever being the father, or any one charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under 16 years of age \* \* \* fails or neglects or refuses to provide such child \* \* \* with the necessary or proper home, care, food and clothing, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the Penitentiary not less than one year nor more than three years.’ May a woman convicted under the section be sentenced to the Ohio Reformatory for Women. What court or courts have jurisdiction under this Section 13008?”

In an opinion rendered by this office on July 3, 1929, which may be found in the published Opinions of the Attorney General, 1929, Vol. II, page 908, I held that under the provisions of Section 2148-1 of the General Code, as amended on April 2, 1929, by the 88th General Assembly, the Ohio Reformatory for Women may only be used for the detention of females over sixteen years of age convicted of a felony, or for the detention of female prisoners transferred from the Ohio Penitentiary or Girls' Industrial School. Since the Ohio Reformatory for Women can only be used for the detention of females convicted of a felony, the first inquiry resolves itself to a determination of the question of whether or not the juvenile court has jurisdiction to try and sentence persons charged with a felony.

Before entering upon a discussion of this question, your attention is directed to the fact that a “juvenile court” is not a separate and distinct court but the term is used by the legislature of Ohio to designate a certain jurisdiction which may be exercised by a common pleas court, probate court or court of insolvency. Section 1639 of the General Code provides that the words “juvenile court”, when used in the statutes of Ohio, shall be understood as meaning the court in which the judge so designated

may be sitting while exercising such jurisdiction. Hereafter in this opinion wherever the term juvenile court is used it should be understood as referring to any court exercising jurisdiction as a juvenile court.

The jurisdiction of a juvenile court is set forth in Section 1683-1 of the General Code, which provides:

"The judge designated to transact the business arising under the jurisdiction conferred in this chapter shall have jurisdiction of all misdemeanors against minors, and of offenses prescribed in sections nine hundred and twenty-eight, six thousand three hundred and forty-four, six thousand three hundred and forty-five, six thousand three hundred and seventy-three, twelve thousand six hundred and sixty-four, twelve thousand six hundred and sixty-six, twelve thousand seven hundred and eighty-seven, thirteen thousand and thirty-one, thirteen thousand and thirty-five, and thirteen thousand and thirty-eight. In all such cases any person may file with the clerk of the judge exercising the jurisdiction an affidavit, setting forth briefly in plain and ordinary language, the charges against the accused, and he shall be tried thereon, and in such prosecutions an indictment by grand jury or information by the prosecuting attorney shall not be required. The judge shall forthwith issue his warrant for the arrest of the accused, who, when arrested, shall be taken before said judge, and tried according to the provisions of this chapter, and if found guilty, shall be punished in the manner provided for by law."

You will note that this section provides that in prosecutions in the cases enumerated therein no indictment by a grand jury is required but it is sufficient to file an affidavit. This language clearly indicates that the legislature did not contemplate final prosecutions of felonies in the juvenile court, for under Article I, Section 10 of the Ohio Constitution, no person can be held to answer for an infamous crime unless on presentment or indictment by a grand jury. The legislature did not even confer final jurisdiction upon the juvenile court in felony cases against minors for Section 1681 of the General Code provides as follows:

"When any information or complaint shall be filed against a delinquent child under these provisions, charging him with felony, the judge may order such child to enter into recognizance, with good and sufficient surety, in such amount as he deems reasonable, for his appearance before the court of common pleas at the next term thereof. The same proceedings shall be had thereafter upon such complaint as now authorized by law for the indictment, trial, judgment and sentence of any other person charged with felony."

While it is true that Section 1652 of the General Code authorizes the commitment of a male delinquent child sixteen years of age or over, who has committed a felony, to the Ohio State Reformatory, this does not confer jurisdiction upon the juvenile court to try and sentence a person for the commission of a felony. A commitment for a violation of Section 1652 of the General Code is not a commitment for a crime but is merely a proceeding correctional in its nature, for the court is authorized to commit under this section without an indictment returned by a grand jury and a trial by jury. The juvenile court has only such jurisdiction as is given it by statute and there is no statutory authority conferring jurisdiction upon a juvenile court to try and sentence persons charged with a felony and therefore it does not have such jurisdiction. Since the juvenile court does not have jurisdiction to try and sentence a female or any other person charged with the commission of a felony, it therefore does not have authority to commit a female to the Ohio Reformatory for Women.

The offense of contributing to delinquency of a minor is defined in Section 1654 of the General Code as follows:

"Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, or acts in a way tending to cause delinquency in such minor, shall be fined not less than ten dollars, nor more than one thousand dollars or imprisoned not less than ten days or more than one year, or both. Each day of such contribution to such dependency, neglect or delinquency, shall be deemed a separate offense. 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."

The penalty provided for a violation of this section makes this offense a misdemeanor, for it is not an offense which may be punished by imprisonment in the penitentiary since the maximum term of imprisonment prescribed is one year. It is therefore apparent that since the offense defined in Section 1654 of the General Code is a misdemeanor, a court may not lawfully sentence a female convicted for a violation of this section to the Ohio Reformatory for Women.

Coming now to the third inquiry, Section 13008 of the General Code provides that the punishment for a violation of its provisions may be imprisonment in the penitentiary. This fixes the character of the offense and makes it a felony, notwithstanding the fact that the section also provides punishment as a misdemeanor. In the case of *McKelvy vs. State of Ohio*, 87 O. S., at page 7, the court, in discussing the question of whether or not the violation of Section 13008 was a felony or a misdemeanor, said as follows:

"Section 12372, General Code, provides that offenses which may be punished by death or by imprisonment in the penitentiary are felonies, and that all other offenses are misdemeanors.

As the punishment for the offense charged herein may be imprisonment in the penitentiary under Section 13008 above, this fixes its character and makes it a felony, notwithstanding the fact that it may also be punished as a misdemeanor."

At the time this decision was rendered by the Supreme Court the penalty provided in Section 13008 was the same as it is now. Since a violation of Section 13008 of the General Code is a felony, therefore a female convicted for an offense charged under this section may be sentenced to the Ohio Reformatory for Women.

Courts which have final jurisdiction to try felony cases are authorized to try and sentence a person for a violation of Section 13008 of the General Code. Examining magistrates and the probate court do not have final jurisdiction in such cases. The court of common pleas, by virtue of the provisions of Section 13422-5 of the General Code, which gives it original jurisdiction of all crimes and offenses except minor offenses, has final jurisdiction to try and sentence a person charged with an offense under Section 13008 and may sentence a female found guilty of violation of this section to the Ohio Reformatory for Women.

Without reviewing the various acts relating to courts of common pleas, division of domestic relations, I desire to call to your attention that in at least some of these acts, if not all, the judges of such court are authorized to exercise the same power and have the same jurisdiction as is provided by law for the judges of the common pleas court and it is also provided in these acts that all juvenile court work be assigned to

the judges of the court of common pleas, division of domestic relations, so that a judge of the court of common pleas, division of domestic relations, may exercise the jurisdiction of a juvenile court or a court of common pleas and when exercising jurisdiction as a court of common pleas he may try a person charged in an indictment returned by a grand jury with a violation of Section 13008 and upon conviction may sentence such person to the Ohio Reformatory for Women. However, when exercising jurisdiction as a juvenile court, he does not have such authority.

In a letter received by this office subsequent to the receipt of the letter quoted in this opinion, two further inquiries were submitted, which are as follows:

“(4) Whether the superintendent of the Ohio Reformatory for Women should accept prisoners brought to the Reformatory on charges known to be misdemeanors.

(5) When the commitment papers show conviction for a crime which may be either a felony or a misdemeanor, as for instance, abandonment, how may the superintendent determine whether the sentence to the Reformatory is legal?”

In discussing these questions it must be kept in mind that the Ohio Reformatory for Women, by virtue of the provisions of Section 2148-1 of the General Code, may not be used for the detention of females convicted of a misdemeanor.

Section 13455-1 of the General Code provides that a person sentenced for a felony to the penitentiary or reformatory, unless the execution thereof is suspended, shall be conveyed to the penitentiary or such reformatory by the sheriff of the county in which the conviction was had, within five days after such sentence and delivered into the custody of the warden or superintendent of such institution with a copy of such sentence. The copy of the sentence delivered to the warden or superintendent of the institution is the authority for the detention of the prisoner in the institution by the warden or superintendent. No provision is made in the statutes of Ohio that a certificate of sentence should contain a description of the offense for which the prisoner is sentenced; however, as a general rule a certificate of sentence must set forth the crime for which the defendant has been convicted and must describe it with reasonable certainty. There may be cases where an offense may be described with reasonable certainty in a certificate of sentence yet not show that such offense is a misdemeanor or a felony. In such cases where the certificate of sentence includes a description of the offense with reasonable certainty and shows upon its face that the court had jurisdiction of the person and the subject matter but fails to show whether or not the offense committed by the prisoner for which she was sentenced is a misdemeanor or a felony, the superintendent of the Ohio Reformatory for Women is not required to go beyond the copy of the sentence in satisfying himself of the existence of a valid sentence against a prisoner and therefore should receive and detain such prisoner. In cases where it is apparent upon the face of the certificate of sentence delivered to the superintendent of the Ohio Reformatory for Women that the defendant was sentenced for a commission of a misdemeanor the superintendent has no authority to detain such prisoner in the Ohio Reformatory for Women and should refuse to accept such prisoner.

In view of the discussion herein and in specific answer to the inquiries, I am of the opinion:

1. A court exercising jurisdiction as a “juvenile court” does not have authority to try and sentence a female charged with a felony and therefore can not lawfully sentence a female to the Ohio Reformatory for Women.

2. Contributing to delinquency of a minor, as defined in Section 1654 of the Gen-

eral Code, is a misdemeanor and a person found guilty of a violation of its provisions can not lawfully be sentenced to the Ohio Reformatory for Women.

3. The court of common pleas, by virtue of the provisions of Section 13422-5 of the General Code, has final jurisdiction in felony cases and may try and sentence a female for a violation of Section 13008, which is a felony, to the Ohio State Reformatory for Women.

4. A judge of the court of common pleas, division of domestic relations, when exercising jurisdiction as a common pleas judge, may lawfully try a female charged in an indictment returned by a grand jury for a violation of Section 13008, and upon conviction may sentence such female to the Ohio Reformatory for Women.

5. A judge of the court of common pleas, division of domestic relations, when exercising jurisdiction as a judge of the juvenile court, does not have authority to lawfully sentence a female to the Ohio Reformatory for Women.

6. Where a sheriff delivers a prisoner to the superintendent of the Ohio Reformatory for Women and the copy of the sentence delivered to the superintendent shows fairly upon its face that the prisoner was sentenced for a misdemeanor, the superintendent should refuse to receive such prisoner. However, where the copy of the sentence includes a description of the offense with reasonable certainty and shows upon its face that the court had jurisdiction of the offense and the person, but fails to show whether or not the prisoner was sentenced for a felony or a misdemeanor, the superintendent of the Ohio Reformatory for Women should receive such prisoner.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2841.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND ERWIN F. FREY, COLUMBUS, OHIO, FOR DRAWINGS FOR AND ERECTION OF A MEMORIAL ON SITE OF GEORGE A. CUSTER BIRTHPLACE IN HARRISON COUNTY, OHIO, AT AN EXPENDITURE OF \$10,700.00. SURETY BOND EXECUTED BY GRACE E. FRY AND ALICE E. BLACKER.

COLUMBUS, OHIO, January 19, 1931.

*Ohio State Archaeological and Historical Society, Columbus, Ohio.*

GENTLEMEN:—You have submitted for my approval a contract between the State of Ohio, acting by the Ohio State Archaeological and Historical Society and Erwin F. Frey, of Columbus, Ohio. This contract covers the preparation of drawings for and erection of a Memorial on the site of the birthplace of George A. Custer, in Harrison County, Ohio. Said contract calls for an expenditure of ten thousand and seven hundred dollars (\$10,700.00).

You have submitted the certificate of the Director of Finance to show that unencumbered funds are available as required by Section 2288-2, General Code.

Although the special act appropriating the money for this contract (H. B. 310, 88th General Assembly, 113 O. L. 623) does not require release of funds by the Controlling Board, it is noted that same has been obtained.