"Moreover, the board of parole had not power to violate the sentence imposed by the court. It was a judgment, a judicial determination, obligatory upon the state and each of its officers until it was reversed or annulled by the judgment of an appellate court, or a judicial determination made in a proceeding attacking it directly. The board of parole had not the right to substitute for it a judgement or sentence of their own creation."

If the Board of Parole did disregard the judgment of the court, it would in effect be violative of the universal rule of law that a final judgment or order of a court cannot be declared void on collateral attack. In view of the fact that the Board of Parole has no authority to inquire into the legality of a sentence, and since the sentence imposed by the trial court for a violation of section 12423-1 does not come within the provisions of section 2166-1, it follows that the prisoner has to serve the minimum term of imprisonment fixed by the trial court, less good time off as provided by section 2210, before the Board of Parole can permit the prisoner to go out on parole.

Specifically answering your inquiry, I am of the opinion that:

1. A board of parole has no authority to release on parole a prisoner sentenced by a court of competent jurisdiction before the expiration of the minimum term of imprisonment fixed by the court, less good time off as provided by section 2210, where the statute (section 12423-1), which defines the offense, fixes only a maximum term of imprisonment and does not provide for a minimum term of imprisonment.

2. A prisoner committed to the Ohio Penitentiary to serve an indeterminate sentence of four to ten years for the violation of section 12423-1, which does not fix a minimum term of imprisonment, is eligible for parole only after serving the minimum term of imprisonment fixed by the trial court, less good time off as provided by section 2210, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1397.

DEPENDENTS—ILLEGITIMATE CHILD—COUNTY WHERE MOTHER HAD LEGAL RESIDENCE HAS JURISDICTION TO COMMIT CHILD BORN IN ANOTHER COUNTY—JURISDICTION OF JUVENILE COURT OVER DEPENDENTS DISCUSSED.

SYLLABUS:

1. *A court of the county in which the mother was originally committed to the Girls' Industrial School, such county being the legal residence of the mother, has jurisdiction to commit her illegitimate child born in another county, under section* 1653, *General Code.*

2. *A juvenile court has jurisdiction to declare any child a dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents, or those standing in loco parentis, does not determine the jurisdiction of the court.* (*O. A. G.* 1929, *Vol. II, page* 1151 *approved and followed.*)

3. *The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of such child. (O. A. G. 1930, Vol. II, page 1315, third branch of the syllabus followed.)*

COLUMBUS, OHIO, August 14, 1933.

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

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

> "Miss Mary Irene Atkinson, Superintendent of our Division of Charities, has submitted to me the enclosed memorandum on the L. M. case, regarding which it is necessary for us to have an opinion.
>
> * * * In this case, as you will see, from the attached correspondence, Miss Atkinson's division is at a standstill insofar as making plans for the child of L. M. because of the fact that none of the political subdivisions involved will take jurisdiction."

The attached letter referred to giving the case history of Miss L. M. states in part:

> "Born 9-8-13 in Youngstown, Ohio.
>
> Father—C. M. address unknown at present.
>
> Mother Mrs. M. C., New Milford, Ohio.
>
> It seems necessary to have an attorney general's opinion regarding the legal residence of the above named girl and the proper county to take custody of her illegitimate child, K. L. born 3-24-33 at Florence Crittenton Home, Columbus.
>
> L.'s parents separated in 1922 and were divorced in Summit County, June 11, 1924 (verified). The mother was given custody of the children, and later remarried. The three children were placed in the Summit County Children's Home. L. ran away repeatedly, going to the home of her mother at New Milford (Portage County), Ohio. In March, 1927, she was sent to the G. I. S. from Summit Co. She was paroled July 9, 1930, to her father who was then living at the City Rescue Mission, Youngstown. L. was placed under the care of Mr. and Mrs. M. C., Youngstown, superintendents of the Mission. In August, 1930, she ran away to her mother but returned to her father because of unkindness of step-father. Her own father did not receive her kindly. About this time she met J. H. of Akron who took her to New York. She accuses him of being the father of her child but claims not to know his present location. He did not admit paternity.
>
> On Feb. 21, 1931, L. was returned to the G. I. S. June 15, 1932, she was paroled to her mother, Mrs. F., New Milford, Ohio. Returned to G. I. S. 10-26-32. She was found to be pregnant and case was referred to D. of C. for Maternity Home care, January 6, 1933. She was admitted to the Florence Crittenton Home, Columbus, February 3, 1931.
>
> It was necessary to return the girl immediately to the G. I. S. because of a venereal disease. (May 22, 1933.) Since that time the baby has remained at the Crittenton Home, which of course, is very bad policy since the Maternity Home is not supposed to care for babies whose mothers are no longer in the institution.

> We are anxious to have an opinion re. legal jurisdiction in this case, as soon as possible in order that the baby may be removed from the Crittenton Home."

I have made inquiry as to the place and date of remarriage of Mrs. M. F., as to the date when she moved to New Milford, and as to whether or not the minor child, L. M., accompanied her to New Milford, but I am unable to acquire specific information on these points.

For the purpose of this opinion, I assume that the children were committed to the Summit County Children's Home before the remarriage and never accompanied their mother to New Milford, Ohio, to live in their stepfather's home in New Milford.

Your inquiry is as to which court or courts would have jurisdiction to make the commitment under section 1653, General Code, of the illegitimate child which is now in the Florence Crittenton Home, Columbus, Ohio. You further inquire as to which county will be responsible for the support of the child.

There is a former opinion of my predecessor, Opinions of the Attorney General for 1929, Volume II, page 1151, prefaced by the following syllabus:

> "A juvenile court has jurisdiction to declare any child a dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court."

This opinion was in response to an inquiry concerning the jurisdiction of a juvenile court to make a commitment to a child-caring agency, such as the Division of Charities, of an illegitimate child born in a feeble-minded institution, the paternity of the child being unknown. This opinion stated that the juvenile court, where the child was found dependent, could take jurisdiction, and if it did, the maintenance could be charged to the county, i. e, to the county from which the child was committed.

This opinion is clear and conclusive as to the proposition that any juvenile court, in whose jurisdiction a dependent child is found, has jurisdiction to hear the case and make the appropriate disposal of it. It did not, however, clearly indicate whether this jurisdiction was exclusive, nor whether a court of the county in which the child had a legal residence would also have jurisdiction to make such commitment.

Since Mrs. M. F. acquired a legal residence in Akron, Summit County, for the purpose of obtaining her divorce, it is evident that at this point in time the legal residence of L. M. was also in Akron, Summit County, since the residence of the mother would be the residence of the minor daughter when the mother was given sole custody of the child.

It becomes necessary to determine the residence of L. M. at the present date. The syllabus of the case of *Trustees of Bloomfield* vs. *Trustees of Chagrin,* 5 Ohio Reports, 316 (1832) states:

> "The mother of an infant pauper settled in one township, does not change the infant's *residence,* by marrying a second husband settled in another township, and there residing without the infant pauper." (Italics the writer's.)

The recent case of *Board of Summit County* vs. *Board of Commrs. of Trumbull County,* 116 O. S. 63 (1927) is also revelant to the inquiry. The syllabus of this case reads:

> "When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and pursuant thereto, the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

It is manifest that the decision is based on the fact that the mother took the minor children into the county into which she moved, as shown by the following language in the opinion at pages 667 and 668:

> "Manifestly the minors of themselves could not change their legal settlement by going from one county to another without their parents, but it is quite another thing to say that if a parent having exclusive control and custody of the children by a decree of court, changes legal settlement, that does not change the legal settlement of the *children who have accompanied such parent into the new legal settlement territory.*
>
> * * * *There is nothing in the decisions of this court cited that conflicts with this decision under the facts of this case."* (Italics the writer's.)

From the last sentence quoted above, it is evident that the Ohio Supreme Court did not mean to overrule its former decision given supra, and *Trustees of Spencer Township, in Guernsey County* vs. *The Trustees of Pleasant Township in Perry County,* 17 O. S. 31 (1866). Under these decisions, remarriage of the mother in another township or county without taking the minor children of the former marriage into the new county with her did not change the legal settlement of the children. I am aware that these decisions were with reference to "legal settlement" for the purposes of poor relief, but I can see no distinction in this regard with reference to the "residence" of the minor children. Consequently, I do not believe that the change of residence by the mother from Summit County to Portage County affected the residence of the minor child, L. M. Moreover, before the mother's remarriage and resultant residence in Portage County, the child was taken from her custody and committed to the Summit County Children's Home and later to the Girls' Industrial School. Consequently, I am of the opinion that the residence of L. M. is in Akron, Summit County, the county from which she was committed to the Girls' Industrial School, and that her parole periods both to her mother's home in Portage County and to Youngstown, Mahoning County, had no effect on her legal residence. Nor does there appear that there can be any argument to the effect that the child was ever emancipated.

In view of the foregoing, it is my opinion that under the facts and circumstances presented in your communication, Summit County is the residence of the minor, L. M., and consequently the residence of her illegitimate child, and that the judge of that county could assume jurisdiction.

With reference to the question you present as to the cost of support of such child, I refer you to the Opinions of the Attorney General for 1930, Volume II, page 1315, the third branch of the syllabus of which reads:

> "The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of said child."

To the same effect is the court's opinion in *State, ex rel.* vs. *Mead, Auditor,* 113 O. S. 692.

Specifically answering your inquiries, it is my opinion that:

1. A court of the county in which the mother was originally committed, such county being the legal residence of the mother, has jurisdiction to commit her illegitimate child born in another county, under section 1653, General Code.

2. A juvenile court has jurisdiction to declare any child a dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents, or those standing in loco parentis, does not determine the jurisdiction of the court. (O. A. G. 1929, Vol. II, page 1151 approved and followed.)

3. The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of such child. (O. A. G. 1930, Vol. II, page 1315, third branch of the syllabus followed.)

Respectfully,
JOHN W. BRICKER,
Attorney General.

1398.

APPROVAL, NOTES OF DECATUR RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—$9,663.00.

COLUMBUS, OHIO, August 14, 1933.

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

1399.

APPROVAL, BONDS OF AUSTINTOWN RURAL SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$15,000.00.

COLUMBUS, OHIO, August 14, 1933.

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