

executed by Frank Geig and Julia Geig, contract encumbrance record No. 39, which has been found to be in all respects regular, and the other files in the case which you submitted to me.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2410.

COMMON PLEAS COURT JUDGE—MAY NOT CERTIFY  
CASE TO JUVENILE COURT UNLESS JUVENILE  
COURT JUDGE CONSENTS TO CERTIFICATION.

*SYLLABUS:*

*Cases may not be certified to a Juvenile Court by a Common Pleas Court unless the judge of the Juvenile Court consents to the certification.*

COLUMBUS, OHIO, May 5, 1938.

HON. FREDERICK R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: I am in receipt of your recent communication requesting my opinion in which you forwarded a communication which reads as follows:

"Section 8034-1 of the General Code provides in substance that the common pleas court may certify matters pertaining to the support and custody of minor children to the juvenile court for further proceedings thereunder according to law, and that when so certified the jurisdiction of the common pleas court shall cease. This section became effective July 19, 1923, and was formerly G. C. 1642-1.

Under the new juvenile court section 1639-16 paragraph C provides that matters of care and custody of children may be certified by the presiding judge of the common pleas court with all the papers filed therein to the juvenile court:

'Provided, however, that no such certification shall be made in either case unless the consent of the Judge of the Court exercising the powers and jurisdiction conferred in this chapter is first obtained.'

In regard to this subject matter you raise the following questions:

1. Are Sections 1639-16 and 8034-1 in conflict? If so, which is authoritative with respect to the certification of such matters to the Juvenile Court?
2. Does the reference to "consent" in Section 1639-16 mean the consent of the Juvenile Court judge or the consent of the judge certifying the matter to the Juvenile Court?

Section 8034-1 referred to in your communication provides as follows:

"In any case where the common pleas court, or a probate court having jurisdiction, has made an award of the custody of a minor child or children and an order for support of such minor child or children, such court may certify the same to the juvenile court of the county for further proceedings thereunder according to law, and thereupon the jurisdiction of the common pleas court, or probate court, in such case as to the custody and support of such minor child or children shall cease."

Section 1639-16 to which you also refer was enacted as part of the New Juvenile Court Code (117 O. L., Amended Senate Bill No. 268, effective August 17, 1937) and to understand the effect of this section, it is necessary to consider the law in effect prior to its enactment. Section 1642-1 which was repealed by Amended Senate Bill No. 268 (the New Juvenile Court Code) provided as follows:

"In any case where the custody and support of a minor child or children has been determined and decreed by the common pleas court, or a probate court having jurisdiction, and such case has been certified to the juvenile court as provided in Section 8034-1 the juvenile court shall have jurisdiction to proceed therein as in original cases."

Thus prior to the enactment of the New Juvenile Court Code, Sections 1639-1 to 1639-62, the authority of a Common Pleas or Probate Court to certify said types of cases was conferred by Section 8034-1, General Code and the authority of the Juvenile Court to accept such cases was provided for in Section 1642-1, General Code. Before considering the portion of Section 1639-16 to which you refer, I believe it well to examine the entire section which reads as follows:

“(a) The court shall have exclusive original jurisdiction under this chapter or under other provisions of the General Code:

1. Concerning any child who is (1) delinquent, (2) neglected, (3) dependent, or (4) crippled.

2. To determine the custody of any child not a ward of another court.

3. To determine the paternity of any child alleged to have been born out of wedlock and to provide for the support and disposition of such child, subject to the concurrent jurisdiction of other courts as provided by law.

(b) The court shall have original jurisdiction to determine all cases of misdemeanors charging adults (1) with contributing to, encouraging, or tending to cause by any act or omission, the delinquency, neglect or dependency of any child; or (2) with any act or omission with respect to any child, which act or omission is a violation of any state law or municipal ordinance; or (3) with desertion, abandonment or failure to provide subsistence.

(c) Except as to juvenile courts separately and independently created by law, jurisdiction to hear, determine and make a record of any action for divorce or alimony involving the custody or care of children filed in the court of common pleas and certified by the presiding judge of the common pleas court with all the papers filed therein to the court for trial; and to provide for the custody, care and support of children certified by the common pleas court of any county of the state after a divorce has been granted.

Provided, however, that no such certification shall be made in either case unless the consent of the judge of the court exercising the powers and jurisdiction conferred in this chapter is first obtained.

After such certification is made and consent obtained, the court shall proceed as if such action was originally begun in said court.”

A review of the provisions of the New Juvenile Court Code convinces me that Section 1639-16, *supra*, was intended to outline the jurisdiction of the Juvenile Courts and to supplant all prior enactments relative to the subject. Reference to the following portion of Section 1639-7 will bear out this conclusion. The first paragraph of Section 1639-4 reads as follows:

“The juvenile court, or court of common pleas, division of domestic relations of any county, separately and independently created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter. Except in counties in which there now is, or may hereafter be created, a separate and independent juvenile court or court of domestic relations, there is hereby established and created within the probate court, a juvenile court, presided over by the probate judge, which shall be a court of record, and which shall exercise such powers and jurisdiction.”

In my opinion the Legislature intended that the Juvenile Courts should have only such jurisdiction as is conferred in Section 1639-16. A comparison of paragraph C of Section 1639-16 with the repealed Section 1642-1 makes it evident that the one was intended to supplant the other and we must, therefore, look to Section 1639-16c for the determination of the jurisdiction of the Juvenile Courts in connection with these cases. As above indicated, I am of the opinion that the two provisions are not conflicting. However, if Section 1634-1 is to be interpreted as conferring jurisdiction on the Juvenile Court, then the provisions thereof are at variance with Section 1639-16c insofar as each provides a different procedure to be followed in the transferring of the cases of the types described from the Common Pleas or Probate Courts to the Juvenile Courts. Under such an interpretation, Section 1639-16c would prevail as it is the later enactment.

This conclusion would follow without a consideration of Section 1639-62, but with it, I am of the opinion that the conclusion is inescapable as this section reads in part as follows:

“\* \* \* and all other sections or parts of sections of the General Code inconsistent herewith, be, and the same are hereby repealed.”

(The word “herewith” referred to in this quotation is the New Juvenile Court Code, of which Section 1639-62 is a part.)

Regarding your second question as to which judge must consent before a certification may be made under Section 1639-16, paragraph C, I wish to direct your attention to the proviso which reads:

“\* \* \* no such certification shall be made in either case unless the consent of the judge of the court exercising the

powers and jurisdiction conferred in this chapter is first obtained.”

The Juvenile Court Code was codified by the Legislature and Section 1 of Amended Senate Bill No. 268 provides as follows:

“That Section 1639-1 to 1639-60 inclusive of the General Code be enacted to read as follows:”

These sections would, therefore, come within Chapter 8 of the Code entitled “Juvenile Court” and the reference to the “judge of the court exercising the powers and jurisdiction conferred in this chapter” is clearly and obviously to the judge of the court exercising the jurisdiction of the Juvenile Court.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2411.

PUBLIC EMPLOYEES RETIREMENT SYSTEM—EMPLOYEE—MEMBERSHIP COMPULSORY—EXEMPTIONS—TYPE OF APPLICATION TO BE FILED—SEE OPINION 2423, MAY 9, 1938.

*SYLLABUS:*

*It is compulsory for an employe of a charter city that has not established a retirement system for its employes to become a member of the Public Employes Retirement System, unless such employe becomes exempted from membership, by filing written application for such exemption with the Retirement Board within three months after the Act goes into effect, or, such employe is a new member over the age of fifty years, and becomes exempted by filing written application for exemption within three months after being regularly appointed an employe, or, such employe comes within that class or group that the board has authority to exempt from compulsory membership, as provided in Section 486-33, General Code, or, such employe comes within the provisions of any other*