ber appointed by the probate court shall be appointed for a period of four years, the appointee of the common pleas court for three years, the appointee of the board of county commissioners for two years, one appointee of the mayor for one year and one appointee of the mayor for five years. Thereafter all members of the authority shall be appointed for five year terms and vacancies for expired terms shall be filled by the same appointing powers. Members of the authority so appointed shall hold office until their successors have been appointed and qualified."

While the courts have occasionally construed the word "shall" as a permissive rather than a mandatory term where the context of the act in which it is used clearly indicates such a construction, it is believed unnecessary to cite authorities in support of the position that the General Assembly has here imposed upon the various appointing authorities a clear mandatory duty to appoint the members of a metropolitan housing authority upon there being certified to such appointing authorities the resolution provided in the foregoing statute. Such appointments must, of course, be made within a reasonable time and in my opinion the performance of this duty may be compelled by an action in mandamus, since the making of such appointments clearly constitutes "the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station" within the meaning of the language of Section 12283, General Code.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2803.

JUVENILE COURT — JUDGE — COUNTY COMMISSIONERS HAVE MANDATORY DUTY TO PURCHASE OR LEASE DETENTION HOME, WHERE JUDGE SO RECOMMENDS —DELINQUENT CHILD MAY BE COMMITTED TO SUCH HOME—SEE OPINION No. 2804, AUGUST 6, 1938.

SYLLABUS:

If the judge of the Juvenile Court advises and recommends the establishment of a detention home, it is mandatory upon the county commissioners to purchase or lease a detention home within a con-

venient distance of the court, not used for the confinement of adult persons charged with criminal offenses and which can be furnished and carried on as far as possible, as a family home, and, the court is authorized to commit a delinquent child to such detention home in the same manner as it is in the case of commitment to any other suitable public institution.

COLUMBUS, OHIO, August 4, 1938.

HON. DUDLEY MILLER OUTCALT, *Prosecuting Attorney, Room 420 Court House, Cincinnati, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

> "On the 7th day of March, 1938, the Board of County Commissioners of Hamilton County adopted and certified to this office the following resolution:
>
> 'WHEREAS, The City of Cincinnati is desirous of having the County of Hamilton assume the operation, management and control of the Hillcrest and Glenview Schools; and
>
> WHEREAS, the County Commisioners of Hamilton County are willing to assume such responsibility if the same may be legally accomplished; and, for that purpose, lease from the City of Cincinnati the properties of Hillcrest and Glenview Schools; and
>
> WHEREAS, The County of Hamilton has heretofore never assumed nor performed such a function,
>
> NOW, THEREFORE, BE IT RESOLVED That the Board of County Commissioners of Hamilton County, Ohio, request the Prosecuting Attorney to render an opinion as to the power and legal authority of this Board to operate, manage and maintain the two above-mentioned institutions as a part of a correctional system for juvenile delinquents and further as to its authority to enter into a lease to accomplish such a purpose.
>
> Adopted at a regular session of the Board of County Commissioners of Hamilton County, Ohio, this 7th day of March, 1938.
>
> Mr. Lambert: Aye; Merrell: Aye; Mr. Campbell: Aye.'
>
> The institutions known as Hillcrest and Glenview Schools were established and maintained by the City of Cincinnati under and by virtue of Sections 4097, et seq., of the General Code of Ohio. Before Hillcrest and Glenview schools were built, a House of Refuge had been maintained by the City of Cincin-

nati. The instant schools were built and renamed by the City of Cincinnati, apparently by virtue of Section 3624 of the General Code.

This office has devoted considerable attention to the problem presented by the inquiry of the county commissioners. Within the last few days we have been in conference with the State Examiners resident in Hamilton County charged with the supervision of the public accounts of this county. They have advised us that until your office rules upon the basic question to the contrary, they are of the opinion that they must disapprove any expenditures made in connection with lease and maintenance of the properties suggested above. Since State Examiners do not look upon the opinions of this office as controlling, and since this is a matter arising under the recently enacted Juvenile Code, which may apply to any county of the state, I feel that the opinion of this office would be but one step toward an ultimate opinion necessarily required of your office.

May I therefore respectfully request that you render this office an opinion as to the power and legal authority of the Board of County Commissioners to lease, operate, manage and maintain the two above mentioned institutions as a part of a correctional system for juvenile delinquents?"

There is no direct statutory authority that permits county commissioners to maintain an institution other than a detention home, to which delinquent children may be committed by the juvenile court of the county.

As stated in 21 Ohio Jurisprudence, 295, "the state, in its capacity of parens patriae, undoubtedly has the right to provide for proper and wholesome restraints in the case of incorrigible children, where their parents are incapable of properly caring for them. Pursuant to this power it may maintain institutions for the confinement and reformation of such children, and provide for their commitment to such institution." Commitment to such institutions is for the purpose of reformation. This purpose was well expressed in the case of *Benjamin Prescott* vs. *The State of Ohio,* 19 O. S., 184, wherein, at page 187, the court said, as follows:

"We do not regard this case coming within the operation of either of these provisions. It is neither a criminal prosecution nor a proceeding according to the course of the common law in which the right to a trial by jury is guaranteed.

The proceeding is purely statutory; and the commitment in

> cases like the present, is not designed as a punishment for crime, but to place minors of the description, and for the causes specified in the statute, under the guardianship of the public authorities named, for proper care and discipline, until they are reformed, or arrive at the age of majority. The institution to which they are committed is a school not a prison; nor is the character of their detention affected by the fact that it is also a place where juvenile criminals may be sent who would otherwise be condemned to confinement in the common jail or the penitentiary."

Among the institutions created and established to fulfill this obligation of the state towards its juvenile delinquents are the Boys' Industrial School, Girls' Industrial School, and Ohio State Reformatory.

Section 2084-1, General Code, provides that boys between the ages of ten and eighteen years, having normal mental and physical capacity for intellectual and industrial training, and not affected with a contagious or infectious disease, may be committed to the Boys' Industrial School.

Section 2101, General Code, provides that "the girls' industrial school shall be for the instruction, employment and reformation of evil disposed, incorrigible and vicious girls."

In Section 1639-1, General Code, a child is defined as follows:

> "The word 'child' includes any child under eighteen years of age."

Section 1639-31, General Code, reads as follows:

> "No child not delinquent, nor any child under ten or over eighteen years of age shall be committed to an industrial school maintained by the state except as provided in the next preceding section."

From the provisions of Sections 2084-1, 2101, 1639-1, and 1639-31, supra, it is clear that a delinquent child between the ages of ten and eighteen years may be committed to an industrial school.

Section 1639-30, General Code, provides for a hearing and disposition of the child by commitment if, upon hearing, it is determined that the child is delinquent. This section reads in part, as follows:

> "The court may conduct the hearing in an informal manner, and may adjourn the hearing from time to time. In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. All cases

involving children shall be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury.

If the court shall find that the child is delinquent, neglected, dependent, or otherwise within the provisions of this act, it may by order duly entered proceed as follows:

1. Place the child on probation or under supervision in its own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;

2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare and authorized to care for children or to place them in suitable family homes;

3. If, in his judgment, it is for the best interests of a delinquent child, the judge may impose a fine upon such child not exceeding $25.00 or costs, or both, and if such child is over fourteen years of age, he may order such child to stand committed until such fine and costs are paid.

4. Make such further disposition as the court may deem to be for the best interests of the child, except as herein otherwise provided.

5. In case of a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory. * * *"

It therefore may be said that the commitment of a delinquent girl to the Girls' Industrial School and the commitment of a boy to the Boys' Industrial School is such a commitment to a "suitable public institution" as provided for in Section 1639-30, supra.

The question now presents itself whether or not the Juvenile Court is limited in commitment under the provisions of Section 1639-30, supra, to existing and established public institutions such as the Boys' Industrial School, the Girls' Industrial School and the Ohio State Reformatory, or, may the county commissioners establish and maintain a public institution within the county to which the Juvenile Court may commit delinquent children.

Under the provisions of Section 2433, General Code, the county commisioners are empowered to purchase or lease with option to purchase, or lease a detention home. This section provides as follows:

"Section 2433. The taxing authority of any county in addition to other powers conferred by law shall have power to pur-

chase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip and furnish a detention home * * *."

Section 1639-22, General Code reads in part, as follows:

"* * * Upon the advice and recommendation of the judge of the court exercising the powers of jurisdiction conferred in this chapter, the county commissioners shall provide by purchase or lease, *a place to be known as a detention home within a convenient distance of the court, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained until final disposition,* which home shall be maintained as provided in this act.

In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron and other necessary employes for such home in the same manner as is provided for the appointment of other employes of the court, their salaries to be fixed and paid in the same manner as the salaries of other employes. The necessary expenses incurred in maintaining such detention home shall be paid by the county." (Italics, the writer's.)

Section 1639-8, General Code, reads in part as follows:

"In Hamilton County, the powers and jurisdiction conferred in this chapter shall be exercised by the court of common pleas, one of the common pleas judges to be elected * * * as a judge of the court of common pleas, division of domestic relations. To him shall be assigned all juvenile work arising under this chapter, and all divorce and alimony cases."

From a reading of Sections 1639-8 and 1639-22, supra, it would clearly appear that upon the advice and recommendation of the judge of the Division of Domestic Relations of the Court of Common Pleas of Hamilton County, the mandatory duty is imposed upon the county commissioners to provide by purchase or lease, a place to be known as a detention home, *where delinquent,* dependent, or neglected *children may be detained until final disposition;* and that, furthermore, there is no inconsistency between Sections 2433 and 1639-22, supra; the former being a general authorization to the county commissioners to lease or

purchase a detention home, and the latter providing under what circumstances such lease or purchase may be made, to wit: "upon the advice and recommendation of the judge of the court."

In the body of an opinion appearing in Opinions of the Attorney General for 1917, Vol. II, page 1519, it was stated as follows:

> "Under the provisions of Section 1670, General Code, as it now stands, it is mandatory upon the advice or recommendation of the judge exercising juvenile jurisdiction, that the county commissioners provide, by purchase or lease, a place to be known as a 'detention home', and it is my view that if the juvenile judge so advises and recommends, then it is the duty of the commissioners to provide the detention home. I think the language of the section is plain and needs no construction or interpretation."

The 1917 opinion, supra, was rendered under the then existing Section 1670, General Code, that was enacted in 103 O. L., 875, in the year 1913. The provisions of said Section 1670, General Code, were substantially the same in mandatorily requiring the leasing or purchasing of a detention home upon advice and recommendation of the judge, as contained in Section 1639-22, supra, enacted and effective August 19, 1937.

The substantial difference between said Sections 1670, General Code, and 1639-22, General Code, was that Section 1670 provided that:

> "In counties having a population in excess of forty thousand the judge may appoint a superintendent and matron who shall have charge of said home, and of the delinquent, dependent and neglected minors detained therein. Such superintendent and matron shall be suitable and discreet persons qualified as teachers of children. So far as possible delinquent children shall be kept separate from dependent children in such home."

It is clear from the provisions of Section 1639-22, supra, that the judge of the court is limited to advising and recommending the need of a detention home, and that although after being advised as to the need of such a home, a mandatory duty devolves upon the county commissioners to purchase or lease the same, with the exceptions that the detention home must be within a convenient distance from the court, not used for confinement of adult persons charged with criminal offenses, and be furnished and carried on as far as possible, as a family home, it is wholly within the discretion of the county commissioners to determine the kind of building for such a home.

I am not acquainted with the Hillcrest or Glenview School property. The county commissioners would not be authorized to establish more than one detention home. The provisions of Section 1639-22, supra, are limited to the establishment of "a detention home" and appointment of a superintendent and a matron and other employes *for such home.* However, it cannot be said that such a detention home must be limited to one building. To have a separate building for girls and boys may be for the best interests and welfare of the county. From a financial standpoint it may be better to secure and maintain the two buildings. It would be within the discretion of the county commissioners to determine whether or not it would be better to lease one or two buildings for such a detention home.

It therefore can be said that if the judge of the Division of Domestic Relations of the Court of Common Pleas of Hamilton County advised and recommended the establishment of a detention home, it would be within the province of the county commissioners to lease from the City of Cincinnati either the Hillcrest or Glenview School, or both, for the establishment of a detention home, provided that such buildings are within a convenient distance from the court, not used for the confinement of adult persons charged with criminal offenses and can be furnished and carried on as far as possible as a family home, and also that the building is not needed by the City of Cincinnati for municipal purposes.

Since the county commissioners have authority to lease either or both of such buildings for a detention home, the question may arise as to whether or not the county commissioners would be authorized to maintain such home as a public institution to which delinquent children of Hamilton County may be committed by the Judge.

I understand that it is customary, and has been accepted as a fixed policy in dealing with delinquent children, to use the detention home as a home to detain children until a hearing is had and the child determined delinquent as provided in Section 1639-30, supra, and upon finding such child delinquent to forthwith place or commit such child in accordance with the provisions of paragraphs 1, 2, 3, 4 and 5 of said Section 1639-30, supra.

It is not within the province of this office to determine the best methods of handling juvenile delinquents. I must say that if those charged with and interested in the care of delinquent children in the State of Ohio have found from years of practical experience and study that it is better not to detain children in the detention home after having been found delinquent, such policy must have merit and following.

However, when confronted with a request as to the authority of public officials to proceed in a certain manner, this office must be guided by what can and cannot be done under the authority of the law and cannot take into consideration fixed practical policies.

A detention home is defined in Section 1639-22, supra, as a home "where delinquent, dependent or neglected children may be detained until final disposition." There is nothing in the language used from which it could be inferred that such home is for the temporary detention of children until found delinquent upon hearing and commitment elsewhere. In fact, the language "delinquent, dependent or neglected children" infers that the child has been found delinquent, dependent or neglected", or, in other words, that the home may be used as a place where delinquent children may be detained. It may be contended that "detained until final disposition" must be interpreted as the disposition provided for in Section 1639-30, supra, that the judge must make after hearing and determination of delinquency. It is my judgment that the language "until final disposition" does not refer to disposition of a child as provided for in said Section 1639-30, supra.

Section 1639-35, General Code, provides in part, as follows:

> "When a child is committed to the boys' or girls' industrial school, or to the Ohio state reformatory, or to the permanent care and guardianship of the state department of public welfare, or to an institution or association certified by the state department of public welfare with permission and power to place such child in a foster home with the probability of adoption, the jurisdiction of the child so committed shall cease and terminate, at the time of commitment. All other commitments made by the court shall continue for such period as designated by the court, or until terminated or modified by the court, or until a child attains the age of twenty-one years."

It is obvious that there is not a "final disposition" if under the provisions of Section 1639-30, General Code, the child is placed as provided for in paragraph "1" of such section, on "probation or under supervision in its own home or in the custody of a relative or other person"; or, as provided in paragraph "2" of the section, "committed to a suitable private institution;" or, as in paragraph "4" a "disposition is made as the court may deem to be for the best interests of the child."

Placements or commitments so made, under the provisions of Section 1639-35, supra, would continue for such period as designated by the court, or until terminated or modified by the court, or, until a child attains the age of twenty-one years. Under such continuing judisdiction of the court the court would have jurisdiction to replace or recommit the child at any time if it deemed it for the best interests of the child. Such placement or commitment makes the child a ward of the court, as so aptly stated in the case of *The Children's Home of Marion County et al.* vs. *Fetter, et al.*, 90 O. S., 110, wherein, at page 127 the court said:

> "The legislature in the exercise of its police power, in order to protect children and to remove them from evil influences, has established the juvenile court. When proceedings are regularly had in that court and there is a finding that the child is delinquent it becomes a ward of the court. In the interest of the child and in the interest of society the court cannot commit its custody to strangers or to an institution for its moral training and education over the objection of the parents."

Paragraph 4, of Section 1639-30, supra, authorizes the Court upon finding a child delinquent, to make such disposition of the child "as the court may deem to be for the best interests of the child." Under the provisions of said paragraph 4, of Section 1639-30, supra, the court would be authorized to commit a delinquent child to a detention home that was so equipped that it could be used as a correctional institution.

It is obvious that a detention home would come within the term "public institution", as used in paragraph 2 of Section 1639-30, supra. Therefore, under the provisions of said paragraph 2, the court would be authorized to commit a delinquent child to a detention home in the same manner as it would to any suitable public institution.

Section 1639-57, General Code, would authorize the county commissioners to provide for the care, maintenance, education and support of delinquent children committed to such detention home. Said section provides, in part, as follows:

> "It is hereby made the duty of the county commissioners to appropriate * * such sum each year as will provide for the care, maintenance, education and support of neglected, dependent and delinquent children, other than children entitled to aid under the aid to dependent children law, Section 1359-31 et seq., G. C., and for necessary orthopedic, surgical and medical treatment, and special care as may be authorized by such court, for any neglected, dependent or delinquent children, as herein provided. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge of the court."

I am unable to find any authority that would permit county commissioners to lease a building or buildings for the purpose of maintaining and operating the same exclusively for the purpose of correctional institutions. Such correctional institutions would replace and supplement so far as the county is concerned, the Boys' Industrial School and the Girls' Industrial School. There would be no more authority for a county to

maintain such institution for delinquent children in the county than for the county commissioners to establish and maintain within the county a penitentiary to which felons of the county were confined.

Therefore, in specific answer to your question it is my opinion that—the county commissioners of Hamilton County are not authorized to lease, operate, manage and maintain the Hillcrest and Glenview Schools as correctional institutions for juvenile delinquents. However, if the judge of the Divison of Domestic Relations of the Court of Common Pleas of Hamilton County advises and recommends the establishment of a detention home, it will be within the province of the county commissioners to lease from the City of Cincinnati either the Hillcrest or Glenview School, or both, for the establishment of a detention home, provided that such buildings are within a convenient distance from the court, not used for the confinement of adult persons charged with criminal offenses and can be furnished and carried on as far as possible as a family home, and also that the building is not needed by the City of Cincinnati for municipal purposes, and the court will be authorized to commit a delinquent child to such detention home, in the same manner as it would in case of commitment to any other "suitable public institution."

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2804.

BOARD OF COUNTY COMMISSIONERS — MANDATORY DUTY TO PROVIDE JUVENILE DETENTION HOME WITHIN CONVENIENT DISTANCE OF JUVENILE COURT—SECTION 1639-22, GENERAL CODE—QUARTERS MAY BE MAINTAINED AT COUNTY HOME—SUPERINTENDENT OR MATRON APPOINTED BY JUDGE OF JUVENILE COURT—PAID ON SALARY OR PER DIEM BASIS—SEE OPINION 2803, AUGUST 4, 1938.

SYLLABUS:

1. *It is mandatory that the board of county commissioners provide a juvenile detention home within a convenient distance of the Juvenile Court under Section* 1639-22, *General Code.*

2. *Detention quarters may be legally and properly maintained at the county home, in charge of a superintendent or matron appointed by the*