

filing fee to the recorder at the time of filing the annual statements required by that section, or authorizing the recorder to charge and collect a fee therefor, the statements must be received and filed gratuitously.

You are further advised that the law does not require such annual statements to be recorded. And while no duty is expressly imposed upon the recorder to keep an index, it is suggested, however, that one should be kept, to the end that the public (especially those dealing with the company) may have easy access to the information which section 8639 G. C. requires to be filed for their benefit.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1851.

COMMON PLEAS COURT—SECTION 13,562 G. C. DOES NOT AUTHORIZE SAID COURT WHEN ACTING AS JUVENILE COURT TO APPOINT AN ATTORNEY TO ASSIST PROSECUTING ATTORNEY IN TRIAL OF JUVENILE CASE.

Section 13562 G. C. was intended to apply to criminal cases originating in the court of common pleas upon indictment and said section does not authorize the common pleas court, when acting as the juvenile court, to appoint an attorney to assist the prosecuting attorney in the trial of a case brought in said juvenile court under the provisions of the juvenile act.

COLUMBUS, OHIO, February 8, 1921.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading as follows:

“Under section 13562 of the General Code, has the common pleas court authority to appoint an attorney to assist the prosecuting attorney in the trial of a case, where the common pleas judge is acting as judge of the juvenile court under and by virtue of section 1639 G. C.?”

The right of the common pleas judge to exercise, upon proper designation, the jurisdiction of juvenile judge, appears from sections 1639 and 1642 G. C. These sections read thus:

“Section 1639. Courts of common pleas, probate courts, and insolvency courts and superior courts, where established shall have and exercise, concurrently, the powers and jurisdiction conferred in this chapter. The judges of such courts in each county, at such times as they determine, shall designate one of their number to transact the business arising under such jurisdiction. When the term of the judge so designated expires, or his office terminates, another designation shall be made in like manner. In case of the temporary absence or disability of the judge so designated another designation shall be made in like manner to cover the period of such absence or disability.

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, and the words ‘judge of the

juvenile court' or 'juvenile judge' as meaning such judge while exercising such jurisdiction. * * *

"Section 1642. Such courts of common pleas, probate courts, insolvency courts and superior courts within the provisions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing encouraging, aiding, abetting, or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations, or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years."

The relation of the prosecuting attorney to juvenile court proceedings appears from section 1664, G. C., a part of the juvenile act. Said section says:

"Section 1664. On the request of the judge exercising such jurisdiction, the prosecuting attorney of the county shall prosecute all persons charged with violating any of the provisions of this chapter."

The juvenile act contains no provision for the appointment of legal counsel to assist the prosecuting attorney, or for the compensation of one who acts as his assistant.

You refer to section 13562 G. C., which says:

"The common pleas court or the court of appeals, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a *case pending in such court*, and the county commissioners shall pay such assistant such compensation for his services as such court approves and to them seems just and proper."

Where, pursuant to sections 1639 and 1642 G. C., the common pleas judge is exercising the juvenile jurisdiction, a case brought before him under the juvenile act is, at least in a certain sense, a case *pending in the common pleas court*. It will be noticed that section 1642 G. C. says that "such courts of common pleas * * * shall have jurisdiction over and with respect to delinquent, neglected and dependent minors * * *." And where the probate judge has been designated to exercise the juvenile jurisdiction, it is proper to refer to the proceedings had before him as "proceedings in the probate court, acting as a juvenile court." In the case of *Children's Home vs. Fetter*, 90 O. S. 110, 124, it is said:

"As has been repeatedly held by this court, the probate courts of this state are courts of record, and their records import verity. Their judgments are binding and conclusive, where there is no fraud and when it appears that there was jurisdiction of the person and the subject-matter. The proceedings in the probate court of Marion county, acting as a juvenile court, were regular and it had jurisdiction to make the order of commitment."

However, I am of the opinion that section 13562 G. C. cannot be invoked as authority to appoint and to pay an attorney to assist the prosecuting attorney in the trial of a case brought under the juvenile act. In the first place, it seems clear that the legislature did not have such employment in mind when section 13562 G. C., formerly known as R. S. 7196, was enacted, for said section became part of our statute law many years before the juvenile act came into existence. Again, the legislative history of section 13562 G. C. shows that it was intended to apply to *criminal cases originating in the court of common pleas upon indictment*. See 53 O. L. 179; 74 O. L. 330; 75 O. L. 47; 82 O. L. 39. In 75 O. L. 47, what is now section 13562 G. C. appeared in an act entitled "To amend sections eight and nine of chapter 3, title 2, code of *criminal procedure*," and its present position in the General Code (Chapter 7 of Title II, Part Fourth) is under the head of "Grand Jury and Its Proceedings."

It is well settled that proceedings had in juvenile court against minors under the age of eighteen years are not *criminal* proceedings at all, but reformatory or corrective and that while the commission of a crime may set the machinery of the juvenile court in motion, the minor proceeded against is not tried by the court as for crime, but for incorrigibility. In re: Januszewski, 196 Fed. 123, 156, and other cases cited in Opinions of Attorney-General for 1919, Vol I, p. 263.

It is true, of course, that certain parts of the juvenile act concern adults, and provide for proceedings that *are* criminal in nature. For instance, section 1654 G. C. says:

"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 nor 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."

This section defines a misdemeanor (State vs. Rose, 89 O. S. 383, 386).

Section 1683-1 G. C., the last section of the chapter entitled "Juvenile Court," says:

"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 the 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."

It will be noted that "in all such cases", the defendant is tried upon affidavit filed with the clerk of the judge exercising the juvenile jurisdiction, rather than upon information or indictment. So that if our premise is true—namely that section 13562 G. C. was intended to apply only to criminal cases originating in the court of common pleas upon indictment—no authority exists to appoint and compensate an attorney assisting the prosecuting attorney in the trial of any of the cases mentioned in section 1683-1 G. C., even where such case is tried in the common pleas court acting as a juvenile court.

If it should be contended that the construction herein given to section 13562 G. C. is an illiberal and technical one, the answer is that matters involving expenditure of moneys raised by taxation are to be narrowly scrutinized, and where doubt exists as to the legality of such expenditures, the doubt is to be resolved in favor of the taxpayer and against the claimant. As said in *State vs. Maharry*, 97 O. S. 272:

"All public * * * moneys * * * constitute a public trust fund * * *. *Said trust fund can be disbursed only by clear authority of law.*"

It is, therefore, the view of this department that section 13562 G. C. does not authorize the common pleas court, acting as the juvenile court, to appoint an attorney to assist the prosecuting attorney in the trial of a case brought in said juvenile court under the provisions of the juvenile act.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1852.

TAXES AND TAXATION—LEASE FOR TERM OF YEARS IS NOT A SEPARATELY TAXABLE INTEREST IN LAND UNDER PROPERTY TAXATION LAWS OF THIS STATE.

An ordinary lease for a term of years is not a separately taxable interest in land under the property taxation laws of this state.

COLUMBUS, OHIO, February 11, 1921.

HON. DONALD KIRKPATRICK, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date requesting the opinion of this department upon the following question:

"On May 1, 1913, A leased to B certain downtown business property in the city of Springfield, Ohio. The lease was a fifteen year lease expiring May 1, 1928. B agreed to pay \$4,000 per annum as rental. The lease was assignable. B is not charged in the lease with any taxes or assessments that may be charged against A, the lessor. In 1913 A's property was on the county tax duplicate for \$56,860.00. In 1920 Clark county had a reappraisal of land values. A's land and buildings were placed on the tax duplicate for \$92,150.00. A's property, if it were to be leased today, would rent for at least \$8,000 per annum.