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JUVENILE COURT — CHILD, ABANDONED, NEGLECTED OR DEPENDENT — COMMITTED TO PERMANENT CARE OF COUNTY OR DISTRICT CHILDREN'S HOME OR ACCREDITED INSTITUTION OR AGENCY, OR STATE DEPARTMENT OF PUBLIC WELFARE OR WHERE PARENT OR GUARDIAN VOLUNTARILY SURRENDERED CHILD TO INSTITUTION OR AGENCY — UPON APPLICATION AND AFTER NOTICE AND HEARING AND FOR GOOD CAUSE SHOWN, JUVENILE COURT MAY TERMINATE CUSTODY AT ANY TIME BEFORE CHILD REACHES AGE OF TWENTY-ONE YEARS — SECTION 3093 G. C.

SYLLABUS

Where a child by reason of abandonment, neglect or dependency has been committed by the Juvenile Court to the permanent care of the county or district children's home or of any other accredited institution or agency caring for dependent children, including the state department of public welfare, or where such child has been by the parent or guardian voluntarily surrendered to such institution or agency, such juvenile court may, pursuant to Section 3093, General Code, upon application and after notice and hearing and for good cause shown, terminate such custody at any time before the child reaches the age of twenty-one years.

Columbus, Ohio, March 25, 1944

Hon. Herbert R. Mooney, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion, such request reading as follows:

"We have been requested by the Cuyahoga County Child Welfare Board to secure from the Attorney General an interpretation of amended O. G. C. 3093 which became effective September 9, 1943. The facts of the case are as follows:

'Jacqualine H. born October 15, 1924, was in 1925 permanently surrendered by her mother to the Catholic Charities Corporation of Cleveland, Ohio. On September 26, 1933, the Catholic Charities Corporation, in turn, permanently surrendered said child to the Cuyahoga County Child Welfare Board. On

June 1, 1942, Jacqueline got married. The Cuyahoga County Child Welfare Board now wants the Cuyahoga County Juvenile Court to terminate its (the Board's) permanent custody of Jacqueline, and said court says it has no jurisdiction in the matter since the girl is over eighteen years of age.

While it is true that ordinarily a Juvenile Court has no jurisdiction over minors over eighteen years of age (unless jurisdiction was acquired prior to the time the minor became eighteen years of age) still, it seems to me that the new Section 3093 is really a remedial statute and should enable the Juvenile Court to relieve an agency of permanent custody even though the minor is over eighteen years of age. There is no question but that a Juvenile Court can take jurisdiction of a minor over eighteen years of age in order to grant a consent to marry. And, if the Court can grant the minor over eighteen a consent to marry, shouldn't it follow that the Court could, thereafter, in accordance with the provisions of the new Section 3093, relieve the child-caring agency of the permanent custody of the married minor?"

The Juvenile Court Code, so-called, became effective August 19, 1937 (117 O. L. 520). This act is codified as Sections 1639-1 to 1639-62, inclusive, General Code.

Section 1639-1, General Code, contains among others, the following definitions:

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

The word 'adult' includes any person eighteen years of age or over".

Section 1639-23, General Code confers upon the Juvenile Court specific jurisdiction over a "child" who appears to be either a delinquent, neglected, crippled or dependent child, and the court is authorized by Section 1639-30, General Code, after an informal hearing, to make either of several orders, among others:

"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 or analogous department of the state in which such institution or agency is situate, and authorized to care for children or to place them in suitable family homes; * * *

Section 1639-35, General Code, reads 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.”

(Emphasis added.)

The jurisdiction of the Juvenile Court so far as concerns children is thus plainly limited by this Code to those who are under eighteen years of age, and it appears plain that any child who has been committed by the Juvenile Court pursuant to the terms of Section 1639-35 above quoted, must have been under eighteen years of age when committed. And it will be noted that by the provisions of that section, when the court has committed a child to any of the institutions named, no matter how young the child may be, the jurisdiction of the court over the child ceases and terminates at the time of commitment. This section, however, is the successor to former Section 1643, General Code, which was repealed in the enactment of the Juvenile Court Code. Section 1643 as previously in force, read in part as follows:

When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, *such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The power of the court over such child shall continue until the child attains such age.* Provided, in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, *such jurisdiction shall cease at the time of commitment.*”

(Emphasis added.)

Here, it will be noted, the law contemplated that for certain purposes the child should continue as a ward of the court beyond the age of eighteen and until it attained the age of twenty-one years. The provi-

sion of Section 1639-35 that the jurisdiction of the court should cease when the child was committed to one of the institutions named was new, and from the time of its enactment the court had no power to exercise any further jurisdiction over such child, and has no such power now, unless by the terms of Section 3093, General Code, as recently amended and to which you have called my attention, a new jurisdiction has been conferred on the juvenile court. Section 3093, as it stood prior to the amendment by the 95th General Assembly, contained the following provision:

“All wards of a county or district children’s home, or of any other accredited institution or agency caring for dependent, children who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the permanent care of such home, *or who have been by the parent or guardian voluntarily surrendered* to such an institution or agency, shall be under *the sole and exclusive guardianship and control of the trustees until they become of lawful age.*”

(Emphasis added.)

Nothing in the provision last quoted gave the Juvenile Court any power to change or modify the commitment which has been made under Section 1639-35. On the contrary it rather emphasizes the conclusion that the court was without power in the matter. However, in House Bill No. 67 as enacted by the 95th General Assembly, Section 3093 was amended. The pertinent portion of this section as amended, reads as follows:

“All wards of a county or district children’s home, or of any other accredited institution or agency caring for dependent children, *including the state department of public welfare,* who by reason of abandonment, neglect or dependence have been committed by the juvenile court to the permanent care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. *After application and after due notice and hearing and for good cause shown, the juvenile court may terminate such custody in the interest of the child prior to becoming of lawful age.*”

(Emphasis added.)

The only change made in the entire section was by the insertion and addition of the words which I have emphasized. Let it be noted too, that this section both before and after amendment refers not only

to a custody that had been created by the court's own commitment, but also to one that had been created by the act of the parent or guardian in surrendering the child to one of the agencies named, which is the case raised by your inquiry.

It appears to me to be too clear to admit of argument, that it was the intention of the legislature to confer upon the juvenile court the power to deal with the custody of a child who had been committed either by the juvenile court or by the voluntary action of the parent to an institution or agency such as is referred to in the statute, and to exercise this power at any time up to the time when the child reached the age of twenty-one years. "Lawful age" certainly refers to the age of majority as fixed by law. Coupled with, and added to the provision that such child should be under the sole and exclusive guardianship and control of the trustees until it became of lawful age, it seems to me that the intention of the legislature was clearly to provide a means whereby for sufficient cause and "in the interest of the child" both the child and the institution could be relieved of a situation brought about by the commitment. The legislature having full power to confer upon a court of this character such jurisdiction as it sees fit and to modify, take away, increase or restore such jurisdiction, has evidently seen fit to exercise its power by giving the court an extended jurisdiction for this purpose only.

You call attention to Section 11181-1, General Code, which authorizes the juvenile court to take jurisdiction of any minor who has no parents or guardian in order to give a consent for such minor to marry. This strengthens my opinion that the legislature has intended by the amendment of Section 3093 to give the Juvenile Court a special power outside its ordinary jurisdiction.

So far as my Opinion No. 2959 found in 1940 Opinions of the Attorney General is concerned, that opinion was based, of course, upon the law as it then stood, and I believe it is a correct statement of the law then existing. The same may be said of the opinion of my predecessor, found in 1934 Opinions of the Attorney General, No. 3160.

Specifically answering your question, it is my opinion:

Where a child by reason of abandonment, neglect or dependency has been committed by the Juvenile Court to the permanent care of the county or district children's home or of any other accredited institution or agency caring for dependent children, including the state department of public welfare, or where such child has been by the parent or guardian voluntarily surrendered to such institution or agency, such juvenile court may pursuant to Section 3093, General Code, upon application and after notice and hearing and for good cause shown, terminate such custody at any time before the child reaches the age of twenty-one years.

Respectfully,

THOMAS J. HERBERT

Attorney General