

from its service fund the expenses of the city solicitor on trips occasioned by his duties as legal advisor of the board of education if:—(1) the clerk of the board of education of the city school district on the third Monday of January or on the Monday preceding the close of the school year, certified to the board of education the number of pupils enrolled in the public schools in the city school district; (2) the board of education duly adopted a resolution that set aside a sum that did not exceed five cents for each child enrolled and earmarked such amount of money as the 'service fund'; (3) the city solicitor actually incurred the expenses when he was sent out of the city school district for the performance of duties imposed upon him by the provisions of Section 4761, *supra*, and that the duties performed by him were for the purpose of promoting the welfare of the schools of the city school district; (4) the city solicitor furnished a statement to the board of education at its last meeting of the month held by the board of education after the expenses were incurred."

In my opinion a "service fund" for a county or exempted village board of education in pursuance of Section 7704, General Code, as amended by the 93rd General Assembly, cannot lawfully be made available until after an official certification of pupil enrollment is made by the clerk of such board for the purpose indicated, on the third Monday of January, 1940, or the Monday preceding the close of school for the school year 1939-1940.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1478.

JUVENILE COURT CREATED WITHIN PROBATE COURT UNDER SECTION 1639-7 G. C. SUBJECT TO PROVISIONS OF SECTION 3056-2 G. C.—CERTAIN MONEYS COLLECTED BY PROBATE COURT—REQUIRED TO BE PAID TO TRUSTEES OF COUNTY LAW LIBRARY ASSOCIATION.

SYLLABUS:

A juvenile court created within a probate court by virtue of Section 1639-7, General Code, is subject to the provisions of Section 3056-2, General Code, which requires the payment to the trustees of a county law

library association of certain moneys therein specified collected by a probate court.

COLUMBUS, OHIO, November 27, 1939.

HON. HAROLD J. ROSE, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion upon the following:

“In a county where there has not been created a separate Juvenile Court, is the Juvenile Court created within the Probate Court by General Code 1639-7, by virtue of being created within said Probate Court, such a part of the Probate Court that fines arising in said Juvenile Court should by virtue of General Code 3056-2 be paid to the Trustees of the Law Library Association as part of the fines arising in the Probate Court?”

Provisions for the payment to a county law library association of certain moneys collected by the common pleas and probate courts are contained in Section 3056-2, General Code, which reads as follows:

“In each county of the state, all moneys arising from fines and penalties levied, and from cash deposits, bail bonds and recognizances taken by the common pleas and probate courts of such county, which have become forfeited, on account of offenses and misdemeanors brought for prosecution in such courts in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such law library associations, but the total sums so paid therefrom shall not exceed \$1250.00 per annum, and when that amount shall have been paid to the trustees of such law library association, in accordance with the provisions of this section, then no further payments shall be required thereunder in that calendar year from the clerks of such respective courts.”

In view of the above quoted section you inquire whether or not its provisions are applicable to such moneys collected by a juvenile court established and created under the provisions of Section 1639-7, General Code, 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." (Italics the writer's.)

It will be noted that by virtue of that section in those counties in which there has not been created a separate and independent juvenile court or court of domestic relations a juvenile court is established within the county probate court. Such court so created, presided over by the probate judge, is designated one of record and is empowered to exercise the powers and jurisdiction conferred in the Juvenile Court Code upon a juvenile court or court of common pleas, division of domestic relations, separately and independently created. The language of the statute is very explicit to the effect that such court is an integral part of the existing probate court and is created within it.

Section 3056-2, *supra*, requires the clerk of the probate court to retain and pay monthly to the trustees of the county law library association certain moneys therein specified collected by the court, and further limits the amount so to be paid to the sum of \$1250 per annum by both the common pleas and probate courts. As pointed out above, a juvenile court created under the provisions of Section 1639-7, *supra*, is a part of the probate court and it would logically follow that the moneys collected by it are subject to the same conditions and provisions as similar moneys collected by the probate court itself.

Specifically answering your question, I am of the opinion that a juvenile court created within a probate court by virtue of Section 1639-7, General Code, is subject to the provisions of Section 3056-2, General Code, which requires the payment to the trustees of a county law library association of certain moneys therein specified collected by a probate court.

Respectfully,

THOMAS J. HERBERT,
Attorney General.