

1690.

JUVENILE COURT—JURISDICTION OF DEPENDENT CHILD CONTINUES UNTIL CHILD BECOMES TWENTY-ONE—EXCEPTION—SUCH JURISDICTION UNAFFECTED BY CHANGE OF RESIDENCE OF PARENT.

**SYLLABUS:**

1. *Where a juvenile court has taken jurisdiction of a dependent child, the change of the residence of the father while such child is a ward of the juvenile court does not divest the court of its jurisdiction.*

2. *Such jurisdiction continues until the child is twenty-one years of age unless terminated by reason of the permanent commitment of such child, in accordance with the provisions of Section 1643 of the General Code.*

COLUMBUS, OHIO, March 28, 1930.

HON. HAL. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication requesting my opinion upon the following statement of facts:

“A boy was committed to the Division of Charities from Lucas County on April 11, 1928. The parents of the child then had residence in Toledo. He was re-committed from Lucas County April 4, 1929. After the original commitment, the father of the boy changed his residence from Lucas County to Wood County.

Please advise whether the change of the residence of the father while the child was a ward of the Juvenile Court of Lucas County changed the residence of the child or divested the court of Lucas County of jurisdiction. If such change did not divert the jurisdiction of the court how can such jurisdiction be terminated? If the jurisdiction of the Juvenile Court in Lucas County is terminated, how can the Juvenile Court of Wood County accept jurisdiction?”

In connection with your communication, your attention is invited to my Opinion No. 755, issued to you under date of August 17, 1929, in which it was held, as disclosed by the syllabus:

“A Juvenile Court has jurisdiction to declare any child to be a dependent which is found within the county under facts and circumstances which constitute dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court.”

By reason of the conclusion hereinbefore mentioned, it appears that legal residence is not the controlling factor in the taking of jurisdiction by a Juvenile Court in the first instance. However, it is believed that Section 1643 of the General Code is pertinent to consider in connection with your question, which provides:

“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.

No court shall issue a writ of habeas corpus against any parties holding a child by reason of a commitment of the juvenile court before such parties have been heard by the court to which application has been made for such writ and their rights to hold such child have been finally determined by the proper court."

By reason of the terms of the above section, it appears that when the Juvenile Court takes jurisdiction of a dependent child such jurisdiction continues until the child reaches the age of twenty-one years unless it is terminated by reason of the permanent commitment of such child to your department as the successor to the Ohio Board of Administration or the Board of State Charities. In your communication you do not state that the child was permanently committed, but rather state that a commitment was made to the division of charities in April, 1928, and the child was recommitted April 4, 1929. It is assumed, therefore, that such commitment was temporary and not permanent.

In my Opinion No. 1090, issued to you under date of October 22, 1929, it was held, as disclosed by the syllabus:

"Where the Juvenile Court of *A* county assumes jurisdiction over an illegitimate child, and subsequently relinquishes such jurisdiction, the provisions of Section 1643, General Code, do not operate to bar the Juvenile Court of *B* county, where the child and mother have established a residence, from assuming jurisdiction over the child under facts and circumstances constituting dependency."

In the latter opinion it was pointed out that the court having taken action in connection with the case then under consideration had completely refused to assume further jurisdiction on the theory that the court had never had jurisdiction. In other words, said opinion considered a state of facts wherein children were found helpless and dependent in a county and the court which apparently had assumed some control over the children denied it had ever had jurisdiction in connection with the matter. The conclusion was reached that in view of the circumstances the Juvenile Court of the county in which the children were found to be dependent should assume jurisdiction. That is to say, the conclusion was based upon a peculiar state of facts which seemed to necessitate the construction therein made in order that relief could be granted in view of the action of the court which had formerly been acquainted with the case.

In *In re Cunningham*, 27 Ohio App. 306, it is clearly indicated that under the provisions of Section 1643, when a juvenile court acquires jurisdiction, the same is a continuing jurisdiction.

In the case of *State ex rel. Tailford vs. Bristline*, 96 O. S. 581, it is stated in the per curiam opinion:

"Where a delinquent or neglected child has become the ward of the

Juvenile Court and has been committed to an institution, under the provisions of the General Code relating to Juvenile Courts, the jurisdiction of the Juvenile Court over such child is a continuing jurisdiction, and it has authority to vacate its original order or modify the same, or make such further and additional orders in relation thereto as to it may seem just and proper."

Based upon the foregoing situations and discussion, it is my opinion:

1. Where a Juvenile Court has taken jurisdiction of a dependent child, the change of the residence of the father while such child is a ward of the Juvenile Court does not divest the court of its jurisdiction.

2. Such jurisdiction continues until the child is twenty-one years of age unless terminated by reason of the permanent commitment of such child, in accordance with the provisions of Section 1643 of the General Code.

In view of the conclusions hereinbefore reached, it is believed unnecessary to more specifically answer the questions which you propound.

Respectfully,

GILBERT BETTMAN,  
*Attorney General*

1691.

CHAUFFEUR'S LICENSE—MUNICIPAL SAFETY DIRECTOR, SUPERINTENDENT OR ENGINEER OF WATERWORKS, POLICE AND FIRE DEPARTMENT MEMBERS NEED NOT REGISTER—TEST FOR DETERMINING WHAT EMPLOYEES ARE CHAUFFEURS.

**SYLLABUS:**

1. *When the director of public safety of a municipality or the superintendent or any engineer of the waterworks of such municipality operates municipally owned motor vehicles, he is not a chauffeur within the meaning of Section 6290, General Code, and is not required to be so registered.*

2. *The operation of a motor vehicle of the employer by an employe, which operation is incidental, intermittent and secondary to his employment for some other purpose, does not necessarily make such employe a chauffeur within the meaning of the law.*

3. *Police patrols or fire trucks belonging to or used by the police or fire departments of a municipality are not motor vehicles within the meaning of the law relating to the registration of chauffeurs, and, therefore, members of such police or fire departments assigned to operate such patrols or trucks are not chauffeurs within the meaning of the law and are not required to be so registered.*

COLUMBUS, OHIO, March 28, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

"The second branch of the syllabus of Opinion No. 1443, year 1930, reads:-

'Any person who is employed for the purpose of operating a motor