

amount with pensions to be paid to members subsequently placed thereon. As was aptly said in *State vs. Holmes*, 23 C. C. (n. s.) 133, "The amount of pension granted is not fixed by statute, but by the rules of the trustees." See also *State vs. Trustees*, 20 C. C. (n. s.) 13, 15.

You are therefore advised that the trustees of the police pension fund are empowered by section 4628 G. C. to amend the rules and regulations so as to increase the amount of pensions to be paid to members, and to make the amendment applicable to those already on the pension roll as well as to those thereafter placed thereon, subject, however, to the express limitation that the amendment shall not become effective until approved by the director of public safety.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1848.

JUVENILE COURT—WHERE DELINQUENT CHILDREN SENTENCED TO BOYS' INDUSTRIAL SCHOOL OR GIRLS' INDUSTRIAL HOME—COSTS PAYABLE BY COUNTY—NO AUTHORITY FOR JUSTICE OF PEACE OR MAYOR TO BIND OVER MINOR UNDER EIGHTEEN YEARS TO COURT OF COMMON PLEAS TO AWAIT ACTION OF GRAND JURY—SUCH CASES TRANSFERABLE TO JUVENILE COURT—FEES AND COSTS IN SUCH CASE—HOW PAID—WHAT CONSTITUTES "RECORD" IN JUVENILE CASES—SEE SECTION 1641 G. C.

1. *Where delinquent juveniles are sentenced to the Boys' Industrial School or Girls' Industrial Home, the costs of the case and the expense of transporting said juveniles to the place to which they have been committed, are, pursuant to Sec. 1682 G. C., payable by the county and not the state.*

2. *There is no statutory authority permitting a justice of peace or mayor to bind over a minor under the age of eighteen years to the court of common pleas to await the action of the grand jury, and no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such persons. A mayor or justice of peace has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682 G. C.*

3. *In cases arising under section 1654 G. C. and all other sections of the juvenile act, the entries and minutes made in the appearance docket of the juvenile court and the entries in the journal of that court of all orders, judgments and findings of the court, are the only "record" required by law to be kept.—Section 1641 G. C.*

COLUMBUS, OHIO, February 8, 1921.

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

DEAR SIR:—You have recently submitted to this department a series of questions relative to the payment of costs in juvenile cases.

(1) The first of said questions is:

"Where delinquent juveniles are sentenced to the industrial school does the state or the county pay the costs of the case and the costs of transportation?"

Authority for the commitment of juvenile delinquents to the Boys' Industrial School and the Girls' Industrial Home is found in section 1652 G. C., which it is unnecessary here to quote. It is believed that section 1682 G. C. furnishes a complete answer to your question, said section reading thus:

"Fees and costs in all such cases with such sums as are necessary for the incidental expenses of the court and its officers, and the expense of transportation of children to places to which they have been committed, except the fees of the court and the fees and expenses of the sheriff and his deputies, shall be paid from the county treasury upon specifically itemized vouchers, verified by oath and certified to by judge of the court."

(2) Your second question reads thus:

"Where an arrest is made, and the justice or mayor binds the defendant over to the court of common pleas to await the action of the grand jury and the juvenile judge orders the matter transferred by reason of the defendant being of such age as to be within the jurisdiction of said court, and said defendant being found guilty as charged in the affidavit filed in said court, and sentenced to the industrial school for boys (or girls) are the costs before the justice or mayor, and those accruing in the juvenile court payable by the state or county?"

It may be well first to observe that there is no statutory authority permitting a justice of peace or mayor to bind a minor under the age of eighteen years over to the court of common pleas to await the action of the grand jury. For this reason no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such persons. The duty of such officers appears from section 1659 G. C., which says:

"When a minor under the age of eighteen years is arrested, such child, instead of being taken before a justice of the peace or police judge, shall be taken directly before such juvenile judge; or, if the child is taken before a justice of the peace or a judge of the police court, it shall be the duty of such justice of the peace or such judge of the police court, to transfer the case to the judge exercising the jurisdiction herein provided. The officers having such child in charge shall take it before such judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before the judge in the first instance."

Provision is made by the juvenile act, however, for binding over to the court of common pleas a delinquent child charged with a felony, but in such cases the binding over is upon the order of the juvenile judge. Section 1681 G. C., the provision referred to, says:

"When any information or complaint shall be filed against a delinquent child under these provisions, charging him with a felony, the judge may order such child to enter into a recognizance, with good and sufficient surety, in such amount as he deems reasonable, for his appearance before the court of common pleas at the next term thereof. The same proceedings shall be had thereafter upon such complaint as now authorized by law for the indictment, trial, judgment and sentence of any other person charged with a felony."

Such costs as accrue in the court of the justice of the peace or mayor in the doing of what section 1659 G. C. authorizes such officers to do, together with the costs accruing in the juvenile court, are payable by the county under section 1682 G. C., and not by the state. This matter has already been passed on by this department in opinion number 502, rendered June 14, 1915, to the Bureau of Inspection and Supervision of Public Offices, and the same may be found in Opinions of the Attorney-General for 1915, Vol. II, p. 1022. The head-note to said opinion is as follows:

“A mayor has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682 G. C.”

(3) Your third question reads:

“Where a defendant is arrested and prosecution started in a justice or mayor’s court, and on discovering defendant’s age to be under 18 and case is immediately transferred and defendant committed to juvenile court, how are the costs of justice’s court provided for?”

This question has already been answered by the discussion of your second question.

(4) and (5). Your fourth and fifth questions may be considered together. They are as follows:

“When an adult is arrested on a warrant issued by the juvenile court charging ‘contributing toward delinquency of a minor child’ and the cause is heard in said juvenile court, and the defendant found guilty and is sentenced, should a record of such case be made? If so where?”

“Is there any provision of law for a final record of the proceedings of the juvenile court? Or do the entries in the appearance docket and on the journal of such court constitute a sufficient record of such cases?”

It is evident that your fourth question relates to a person proceeded against in juvenile court for violating the provisions of section 1654 G. C., which 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.”

In asking, in your fourth question, whether a record of such case should be made, and in your fifth question whether there is “any provision of law for a *final record* of the proceedings of the juvenile court,” you possibly have in mind the following sections of the general code:

"Sec. 2874. The clerk shall * * * make a complete record of each cause unless by law or by the order of the court such record is dispensed with * * *."

"Sec. 2883. Unless by order on the journal a record is dispensed with, the clerk shall make a complete record of each cause within six months after final judgment or order of the proper court. On his failing to make such record within such time, the clerk may be removed by the court of common pleas."

"Sec. 11605. Except as hereinafter provided, the clerk shall make a complete record of every cause as soon as it is finally determined, unless such record, or some part thereof, be waived."

"Sec. 11606. The clerk must make up such record in each cause in the vacation next after the term at which it was determined, which the presiding judge of the court shall subscribe at the following term."

"Sec. 11607. The record shall be made up from the petition, the process, return, pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court. If items of an account, or copies of papers attached to pleadings, are voluminous, the court may order the record to be made by abbreviating them or inserting a pertinent description thereof, or by omitting them entirely."

Sections 13529 and 13596 G. C.—part of the criminal code—also speak of a "complete record."

It is the view of this department that the sections just referred to are inapplicable to proceedings had in the juvenile court by reason of section 1641 G. C.—part of the juvenile act—which says:

"The clerk of the court of the judge exercising the jurisdiction shall keep an appearance docket and a journal, in the former of which shall be entered the style of the case and a minute of each proceeding and in the latter of which shall be entered all orders, judgments and findings of the court."

Said section is, we think, in the nature of a special provision and governs to the exclusion of general provisions.

You are, therefore, advised that in cases arising under section 1654 G. C. and all other sections of the juvenile act, the entries and minutes made in the appearance docket of the juvenile court and the entries in the journal of that court of all orders, judgments and findings of said court, are the only record required by law to be made.

Respectfully,
 JOHN G. PRICE,
Attorney-General.