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SECTION 2151.39, R.C., NOT APPLICABLE TO ACCEPTANCE OF A JUVENILE DELINQUENT BY OHIO COMPACT ADMINISTRATOR—§§2151.39, 2151.56, 2151.61, R.C.

SYLLABUS:

The provisions of Section 2151.39, Revised Code, are not applicable to the acceptance of a juvenile delinquent by the Ohio Compact Administrator pursuant to the provisions of Sections 2151.56 to 2151.61, inclusive, Revised Code.

Columbus, Ohio, August 7, 1959

Hon. John W. Shoemaker, Compact Administrator
Interstate Compact on Juveniles, Columbus, Ohio

Dear Sir:

I have your request for my opinion which asks:

“In the light of what would appear to be a conflict between the terms of Section 2151.56 and 2151.39, I respectfully request your opinion as to the following questions:

“(1) Where a delinquent child under age 18 is placed on probation or parole in another state signatory to the Interstate Compact on Juveniles, and placement is sought in Ohio under the terms of such compact, does the Ohio compact administrator have any duty or authority to accept such delinquent juvenile where the parent, guardian or person entitled to legal custody of such delinquent juvenile is residing or undertakes to reside in Ohio, irrespective of whether permission may be obtained from the department of public welfare?

“(2) Where such placement is sought with relative or other persons in Ohio and where the parent, guardian or person en-

titled to legal custody is *not* residing in Ohio does the Ohio compact administrator have the authority to accept such delinquent child without the permission of the Ohio Department of Public Welfare.”

Section 2151.56, Revised Code, to which you refer, provides in part:

“* * * the receiving state *shall* accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. * * *.” (Emphasis added)

Said section further provides in part:

“* * * A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, * * *.”

Section 2151.39, Revised Code, provides:

“No person or association of another state, incorporated or otherwise, shall place a child in a family home within the boundaries of this state, either with or without indenture or for adoption, unless such person or association has furnished the department of public welfare with such guaranty as it may require that no child having a contagious disease, deformity, feeble mind, or vicious character, shall be brought into this state by such person or association or its agents, and that such person or association will promptly receive and remove from the state a child brought into the state by such person or association or its agents, which becomes a public charge within five years thereafter.”

The over-all intent of Sections 2151.01 to 2151.54, inclusive, of Chapter 2151., Revised Code, is found in Section 2151.55, Revised Code, which provides:

“The purpose of sections 2151.01 to 2151.54, inclusive, of the Revised Code, is to secure for each child under the jurisdiction of the juvenile court such care, guidance, and control, preferably in its own home, as will best serve the child’s welfare. When such child is removed from its own family, it is the intent to secure for such child, custody, care, and discipline, as nearly as possible equivalent to that which should have been given by its parents. The principle is hereby recognized that children under the jurisdiction of the juvenile court are wards of such court, subject to the discipline and entitled to the protection of such court, which may intervene to safeguard them from neglect or injury, and to

enforce the legal obligations due to them. To this end such sections shall be liberally construed.”

Section 2151.56, Revised Code, part of the act commonly known as the “Interstate Compact on Juveniles,” is a special statute whose primary purpose is to provide for the welfare and protection of juveniles and the public with respect to the (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return from one state to another of non-delinquent juveniles, who have run away from home; and (4) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

The long accepted practice has been that special legislation takes precedence over general legislation.

The Supreme Court of Ohio in the case of *Acme Engineering Company v. Jones*, 150 Ohio St., 423, in the first paragraph of the syllabus stated:

“1. A special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision.”

In 166 Ohio St., 191, *Fisher Brothers Co. v. Bowers, Tax Commissioner*, Stewart, J. had this to say:

“We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter.”

In 37 Ohio Jurisprudence, page 409, Section 150, we find this statement:

“As a general rule, general statutory provisions do not control, or interfere with, specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special provision generally operates as an exception to the general provision, which, accordingly must yield to the former. The special provision has been declared to modify, qualify, limit, restrict, exclude, supersede, control, govern, and prevail over the general provision, although the words of the general act, standing alone, would be broad enough to include the subject to which the more particular

provisions relate. The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.”

The intent of the Legislature in enacting the act herein, was the desire to establish a uniform law on the subject of juveniles. The desirability of such legislation had been long felt by our juvenile courts and other public officials.

This very subject had been a source of irreconcilable conflict between states. The importance of uniformity in the law was long overdue. It is inconceivable, in my opinion, that the General Assembly, while treating the subject at large, intended that Section 2151.39, Revised Code, would remain operative as to defeat the very purpose of this compact.

Section 2151.57, Revised Code, makes it the mandatory duty of the compact administrator to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact.

Section 2151.60, Revised Code, provides :

“The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.”

The general rule of statutory construction is found in the second paragraph of the syllabus in the case of *Slingluff et al., v. Weaver, et al.*, 66 Ohio St., 621, which provides :

“2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

The language found in Article VII, paragraph (a) of Section 2151.56, Revised Code, makes it mandatory upon the part of the receiving state to accept a delinquent juvenile whose parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to

reside in the receiving state. Also, the receiving state *may* accept a child whose parent, guardian or person entitled to legal custody does not reside or undertake to reside in the receiving state.

Said Section 2151.56, Revised Code, makes no reference to the requirements of Section 2151.39, *supra*, however, it does contain provisions for the receiving state to make investigations and receive pertinent records. In this regard said Section 2151.56, Article VII, paragraph (a) reads in part:

“* * * Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. * * *”

In view of the above, therefore, I am of the opinion that the provisions of Sections 2151.56 to 2151.61, inclusive, Revised Code, which specifically pertain to juvenile delinquents, are exceptions to the requirements of Section 2151.39, Revised Code, which section is a general law pertaining to the placement of *any* child in a family home in Ohio.

Accordingly, it is my opinion and you are advised that the provisions of Section 2151.39, Revised Code, are not applicable to the acceptance of a juvenile delinquent by the Ohio Compact Administrator pursuant to the provisions of Sections 2151.56 to 2151.61, inclusive, Revised Code.

Respectfully,

MARK McELROY

Attorney General