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WHEN A JUVENILE COURT COMMITS A CHILD TO A BOYS INDUSTRIAL SCHOOL, THE JURISDICTION OF THE COURT OVER THE BOY CEASES—§§2151.35, 5141.02, 5141.01, R. C., 1639-35, G.C., 1.24, R.C.

SYLLABUS:

Under Sections 2151.38, 5141.01, and 5141.02, Revised Code, where a juvenile court commits a child to the boys' industrial school, the jurisdiction of the court over the child ceases; and the fact that the court may have attempted to put a condition upon the release of the child, such as making restitution for damages, does not affect the exclusive power of the school and the department of mental hygiene and correction to release the child for satisfactory behavior and progress in training; and the department may so release the child regardless of whether or not such condition has been fulfilled.

Columbus, Ohio, December 3, 1962

Hon. Robert K. Dean, Acting Director
Department of Mental Hygiene and Correction
Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In one of our juvenile courts a boy was found to be guilty of the destruction of property and was committed to the Boys' Industrial School. The order of commitment, inter alia, states that the boy is not to be released from State supervision until restitution of \$57.00 has been made to the complainant.

"What obligation, if any, does the order of restitution place upon the Department of Mental Hygiene and Correction?"

Under Section 2151.23, Revised Code, a juvenile court has “exclusive original jurisdiction” concerning any child who is delinquent, but, it will be noted that the exclusiveness of the court’s jurisdiction extends to its *original* jurisdiction only.

Section 2151.35, Revised Code, providing for the disposition to be made by a juvenile court, reads, in part, as follows:

“* * * * * * * * *

“* * * If the court finds that the child is a juvenile traffic offender or is delinquent, neglected, or dependent, it may by order entered proceed as follows:

“* * * * * * * * *

“(B) Commit the child temporarily or permanently * * * to any institution, * * *;

“* * * * * * * * *

“(D) Make such further disposition as the court deems proper;

“* * * * * * * * *”

While Section 2151.35, *supra*, does not contain specific authority for a juvenile court to commit a child to the boys’ industrial school, divisions (B) and (D) of that section would appear to provide such authority. Also, specific authority for such a commitment is found in Section 5141.02, Revised Code, which reads as follows:

“A male youth, not over eighteen nor under ten years of age, having normal mental and physical capacity for intellectual and industrial training, may be committed to the boys’ industrial school by the juvenile courts upon a finding of delinquency.

“Such a youth may be admitted to such school under such regulation governing tuition, maintenance, and discipline as the department of mental hygiene and correction provides. No youth having a contagious or infectious disease shall be committed to such school. Funds collected for the maintenance of a youth so admitted shall be paid into the state treasury to the credit of the general revenue fund.”

Regarding the release of a child who has been committed to the boys’ industrial school, Section 5141.01, Revised Code, provides:

“The boys’ industrial school shall be maintained for the industrial and intellectual training of those admitted to its care. All youths committed to such school by the courts shall be committed until they are twenty-one years of age, *unless sooner released*

by the school for satisfactory behavior and progress in training. *The power to receive and discharge students and regulate their training and instruction shall be vested exclusively in the department of mental hygiene and correction.*" (Emphasis added)

Section 5141.01, *supra*, clearly states that a youth committed to the boys' industrial school is committed until he is twenty-one years of age, unless sooner released *by the school*, and that the power to discharge students is vested *exclusively* in the department of mental hygiene and correction.

Also to consider in this regard is Section 2151.38, Revised Code, which reads as follows:

"When a child is committed to the boys' or girls' industrial school, or to the Ohio state reformatory, *or to the permanent custody* of the department of public welfare, or to the division of social administration in said department, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, the order shall state that such commitment is permanent and the jurisdiction of the juvenile court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the division or any county department, board, or certified organization *having such permanent custody* makes application to the court for the termination of such custody, the court upon such application, after notice and hearing and for good cause shown, may terminate such custody at any time prior to the child becoming of age. The court shall make disposition of the matter in whatever manner will serve the best interests of the child. All other commitments made by the court shall be temporary and shall continue for such period as designated by the court in its order, or until terminated or modified by the court, or until a child attains the age of twenty-one years."

(Emphasis added)

Under Section 2151.38, *supra*, the jurisdiction of the juvenile court ceases upon permanent commitment, except that where the division of social administration, etc., has *permanent custody* under the section, the custody may be terminated only by the court.

Looking at the language of Section 2151.38, *supra*, it might appear that where a child is committed to the boys' industrial school, the school can release custody only if the juvenile court terminates the custody. I do not so construe the section, however, as under its terms, the court retains jurisdiction to terminate custody only where *permanent custody*

has originally been granted to the department of public welfare, the division of social administration, a county department of welfare which has assumed the administration of child welfare, a county child welfare board, or a certified organization. While present Section 2151.38, *supra*, is not entirely clear in this regard, its predecessor, Section 1639-35, General Code, must be read to ascertain the intent of the legislature. Said Section 1639-35, prior to code revision in 1953, read, 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 custody of the state department of public welfare, the division of social administration in said department, a county department, board or a certified organization*, the order shall state that such commitment is permanent and the jurisdiction of the court in respect to the child so committed shall cease and terminate at the time of commitment; except that if the *division or any county department, board or certified organization having such permanent custody* makes application to the court for the termination of such custody, * * *.” (Emphasis added)

Referring to House Bill No. 1 of the 100th General Assembly, which enacted Section 2151.38, *supra*, Section 1.24, Revised Code, reads as follows:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.”

Thus, for the purpose of construing Section 2151.38, *supra*, Section 1639-35, General Code, should be considered as still in existence; and under said Sections 1639-35, it is clear that when a juvenile court commits a child to the boys’ industrial school, the jurisdiction of the court in respect to the child ceases, and there is no requirement that the court terminate custody before the child may be released.

In view of the foregoing, therefore, I am constrained to conclude that upon commitment of a child to the boys’ industrial school, the court loses jurisdiction of the child on such commitment, and that there is no authority for the court to attach a condition to the commitment which would

preclude the department of mental hygiene and correction from exercising the power granted exclusively to it to release a child from the school.

Accordingly, under Sections 2151.38, 5141.01, and 5141.02, Revised Code, where a juvenile court commits a child to the boys' industrial school, the jurisdiction of the court over the child ceases; and the fact that the court may have attempted to put a condition upon the release of the child, such as making restitution for damages, does not affect the exclusive power of the school and the department of mental hygiene and correction to release the child for satisfactory behavior and progress in training; and the department may so release the child regardless of whether or not such condition has been fulfilled.

Respectfully,
MARK MCELROY
Attorney General