

4154.

PROBATE COURT—ACTING AS JUVENILE COURT—JURISDICTION TO HEAR NON-SUPPORT AND JUVENILE DELINQUENCY CASES—INFORMATION BY PROSECUTING ATTORNEY UNNECESSARY.

SYLLABUS:

A probate court, exercising the powers and jurisdiction of a juvenile court, may in accordance with such powers exercise jurisdiction over prosecutions for nonsupport and contributing to the delinquency of a minor without the filing of an information by the prosecuting attorney.

COLUMBUS, OHIO, March 16, 1932.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads as follows:

“I desire to know what the status is in the Juvenile Court of the State of Ohio, wherein the Probate Judge is acting as Juvenile Judge.

Under the present Code, criminal jurisdiction having been taken from the Probate Court and under a Court of Appeals Decision, being *Wilson vs. Leasure*, 36 Appellate 107, requiring an Information to be filed in non-support cases what is the status of the Juvenile Court relative to prosecution in non-support and contributing to delinquency of a minor.”

Section 1639, General Code, found in Chapter 8, Title 4, under title heading “Judicial”, subhead “Juvenile Court”, which is pertinent to your inquiry, reads in part as follows:

“Courts of common pleas, probate, and insolvency courts and superior courts, where established shall have and exercise, concurrently, the powers and jurisdiction conferred in this chapter.”

Section 1642, General Code, relative to the jurisdiction of such courts acting as juvenile courts, reads as follows:

“Such courts of common pleas, probate courts, insolvency courts and superior courts within the provisions of this chapter shall have jurisdiction over and with respect to delinquent, neglected and dependent minors, under the age of eighteen years not inmates of a state institution or any institution incorporated under the laws of the state for the care and correction of delinquent neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations, or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years.”

Section 1654, General Code, sets forth the penalty for abuse of or aiding and abetting the delinquency of a minor.

Section 1655, General Code, provides a penalty for failure or neglect to support a minor under eighteen years of age.

It is clear that the authority granted to Probate Courts by section 13422-4, General Code, namely, the exercise of concurrent jurisdiction with a court of common pleas of original jurisdiction of all crimes and offenses, except in cases of minor offenses, was repealed by the new probate code, 10500-1, et seq., effective January 1, 1932.

This later enactment, however, did not affect the jurisdiction of the courts set forth in section 1642, General Code, over the offenses mentioned therein. It follows therefrom that a probate court may by the terms of section 1639, General Code, exercise the powers and jurisdiction conferred in the chapter in which said section is found.

An examination of the case of *Wilson vs. Leasure*, 36 O. App. 107, referred to in your communication, discloses that the court held therein that a probate court could not sentence for non-support without the filing of an information. The court pointed out that a criminal prosecution in a probate court was controlled by section 13441, which section before its repeal in 113 O. L. 123 reads as follows:

"An indictment is not required in cases in which the probate court has criminal jurisdiction. The prosecuting attorney shall forthwith file an information in such court setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon."

Since such section has been repealed and no substitute enacted, it appears that the decision of the *Leasure* case is not applicable to your inquiry.

It should be noted that section 1655, General Code, requires that before a juvenile court may act in a case involving failure or neglect to support, a complaint must be filed with such court. Section 1647, General Code, relative to who may file a complaint as to a delinquent neglected or dependent child, provides that the same may be upon information and belief. Section 1648, General Code, provides, among other things, that upon filing such complaint the court may issue a warrant for the arrest of any person named in the complaint and charged therein with having committed an act or acts in connection with said child, among which enumerated acts are those of neglect of or abetting the delinquency of such minor, and, if such person is found guilty, the court may impose a fine or imprisonment or both.

It is therefore apparent that in the instant situation authority exists for a probate court, exercising the jurisdiction of a juvenile court, to entertain the actions mentioned in your inquiry in the manner set forth in the sections relative to the juvenile court.

In view of the foregoing, I am of the opinion that a probate court, exercising the powers and jurisdiction of a juvenile court, may in accordance with such powers exercise jurisdiction over prosecutions for nonsupport and contributing to the delinquency of a minor, without the filing of an information by the prosecuting attorney.

Respectfully,

GILBERT BETTMAN,
Attorney General.