

of general circulation in such county. And it appears further in this connection that at this public sale of said lands the same was bid in by said The Norfolk and Western Railway Company by the Division Counsel of said railway company for the sum of \$42,100.60, which was the appraised valuation of said property, and that said bid was the highest and best bid offered for this property.

On an examination of this transcript of your proceedings relating to the sale of this property, it appears that said proceedings were in all respects regular and in conformity with the statutory provisions governing the sale of canal lands.

I am according approving this transcript as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned to you.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3356.

JUVENILE COURT—JURISDICTION—DEPENDENT CHILD—
TERMINATION—COMMON PLEAS COURT—DIVORCE
ACTION—CUSTODY, CARE, SUPPORT CHILDREN—
TRANSFER OF JURISDICTION—SEE SECTIONS 1639-35
AND 1635-16 G. C.

SYLLABUS:

The jurisdiction of the juvenile court over a "dependent" child can be terminated by proper entry in accordance with Section 1639-35, General Code. When there has been such a termination, the Common Pleas Court has, in a divorce action, complete jurisdiction over the matters of custody, care and support of said children; the Common Pleas Court may, however, under the circumstances described in Section 1635-16, General Code, transfer said jurisdiction to the juvenile court.

COLUMBUS, OHIO, December 12, 1938.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

"Will you kindly render an opinion with reference to certain jurisdictional questions set forth hereafter and arising out of the following facts:

In 1935, two minor children under sixteen years of age were found to be dependent by the Juvenile Court in this county and were committed to a Probation Officer. At the same time the father was found guilty of contributing to the dependency and was committed to the workhouse for one year. In 1936 the following entry was made upon the Journal of the Juvenile Court:

‘It appearing to the court that no supervision of Josephine and Edward is necessary, it is ordered that jurisdiction of this court over said minors be and hereby is now terminated.’

In 1938 the wife filed suit for divorce praying, among other things, for the custody of the children and for alimony and support of said minor children.

Question: 1. Is the jurisdiction of the Juvenile Court so acquired in a dependency action a continuing jurisdiction and does it bar divorce court from later acquiring jurisdiction over the matter of the custody and support of the minor children?

2. Does the Juvenile Court have the right to ‘terminate’ its jurisdiction over minor children, acquired in a dependency proceeding?

3. If the Juvenile Court has the power to ‘terminate’ its jurisdiction, under what conditions does it have such power?

4. Is there any authority for an order transferring the jurisdiction from the Juvenile Court to the Common Pleas Court in such cases in a manner similar to the transfer from Common Pleas Court to Juvenile Court under the provision of General Code 8034-1?”

As I see it, the first three questions set forth in your communication should be considered together. It would seem indisputable that the jurisdiction of juvenile courts, under the circumstances you describe, is a continuing jurisdiction until terminated. However, the following quoted portion of Section 1639-35, General Code, specifically contemplates termination of such jurisdiction:

“When a child is committed to the boys’ or girls’ industrial school, or to the Ohio state reformatory, or to the permanent care and guardianship of the state department of public welfare, or to an institution or association certified by the state department of public welfare with permission and power to place such child in a foster home with the probability of adoption, the jurisdiction of the child so committed shall cease and ter-

minate, at the time of commitment. All other commitments made by the court shall continue for such period as designated by the court, *or until terminated* or modified by the court, or until a child attains the age of twenty-one years." (Italics the writer's.)

From the facts recited in your letter, it would appear that the court assumed jurisdiction over the children in 1935 because it found that they were "dependent." Section 1639-4, General Code, defines a dependent child as follows:

"For the purpose of this chapter, the words 'dependent child' includes any child:

1. Who is homeless or destitute or without proper care or support, through no fault of its parents, guardian or custodian.
2. Who lacks proper care or support by reason of the mental or physical condition of its parents, guardian or custodian.
3. Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming its guardianship."

Certainly if by reason of a change in circumstances a child no longer is a "dependent child" as that term is used in the New Juvenile Court Code, Sections 1639-1 to 1639-62, General Code, there would be no reason for the court continuing its jurisdiction and an entry indicating the termination thereof would be proper. Likewise the jurisdiction may be terminated whenever the judge of the juvenile court feels that circumstances have sufficiently changed so as to make unnecessary any further supervision by the court.

Where the jurisdiction of the juvenile court has been terminated, there is nothing to bar the divorce court from taking jurisdiction over the matter of the custody and support of the said children. However, the Common Pleas Court in a divorce action would have the right under Section 1639-16, General Code, if the juvenile court is not one "separately and independently created by law" to certify, with the consent of the judge of the juvenile court, the matter of the custody, care and support of the children to the juvenile court for its determination.

Inasmuch as I have above indicated that it is my opinion that the juvenile court had the power to terminate its jurisdiction in the case you describe and since from the entry you quote it is apparent that this result was accomplished, there is no necessity to go into your fourth question

for there will be no occasion for the juvenile court to transfer its jurisdiction to the Common Pleas Court.

In conclusion and to summarize it is my opinion that in accordance with Section 1639-35, General Code, the jurisdiction of the juvenile court can be terminated and that when the jurisdiction of said court is so terminated, the Common Pleas Court in a divorce action, can dispose of the matters of the custody, care and support of the children involved in the same manner it would in regard to children who have never come within the jurisdiction of the juvenile court.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3357.

A P P R O V A L—BONDS, GREEN RURAL SCHOOL DISTRICT,
SUMMIT COUNTY, OHIO, \$28,000.00, DATED SEPTEMBER
1, 1938.

COLUMBUS, OHIO, December 13, 1938.

Public Employes Retirement Board, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Green Rural School Dist., Summit
County, Ohio, \$28,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of school building addition and equipment bonds in the aggregate amount of \$95,000.00, dated September 1, 1938, bearing interest at the rate of $3\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.