

Note from the Attorney General's Office:

1943 Op. Att'y Gen. No. 43-6406 was overruled by 1987 Op. Att'y Gen. No. 1987-023.

6406

1. FINES—JUVENILE COURT—IMPOSED UPON JUVENILE DELINQUENT—SECTION 1639-30 G. C.—NOT FINES FOR OFFENSES OR MISDEMEANORS PROSECUTED BY STATE—SECTION 3056-2 G. C.—NOT PAYABLE TO TRUSTEES OF LAW LIBRARY ASSOCIATION—PAYABLE INTO COUNTY TREASURY PURSUANT TO SECTION 13454-4 G. C.
2. CHILD UNDER EIGHTEEN YEARS OF AGE—BROUGHT INTO JUVENILE COURT BY STATE HIGHWAY PATROLMAN—FINED BY COURT AS DELINQUENT—SUCH FINES NOT WITHIN PURVIEW OF SECTIONS 1181-5, 6307-108 G. C.—FINES PAYABLE INTO COUNTY TREASURY—SECTION 13454-4 G. C.
3. FINES IMPOSED UPON ADULTS—JUVENILE COURT—PAYABLE TO TRUSTEES OF LAW LIBRARY ASSOCIATION.

SYLLABUS:

1. Fines imposed by a juvenile court upon a juvenile delinquent under authority of Section 1639-30, General Code, are not fines imposed for offenses or misdemeanors prosecuted in the name of the state, as referred to in Section 3056-2, General Code, and therefore are not payable to the trustees of the law library association, but are to be paid, pursuant to the provisions of Section 13454-4, General Code, into the treasury of the county.

2. The fact that a child under eighteen years of age is brought into juvenile court by a state highway patrolman and is by such court fined as a delinquent under authority of Section 1639-30, General Code, would not cause such fine to be disposed of as contemplated by Sections 1181-5 and 6307-108, General Code, but such fine should be paid into the county treasury pursuant to Section 13454-4 of the General Code.

3. Fines imposed by a juvenile court upon adults for offenses within the jurisdiction of that court, should be paid to the trustees of the law library association in accordance with the provisions of Section 3056-2, General Code.

Columbus, Ohio, September 28, 1943.

Hon. William G. Batchelder, Prosecuting Attorney,
Medina, Ohio.

Dear Sir:

I acknowledge receipt of your letter requesting my opinion, reading as follows:

"I should like to have your opinion on the proper disposition of fines collected in the Juvenile Court of the Probate Branch of this county where the fines arise by virtue of arrests of persons under 18 years of age and such arrests are made by the State Highway Patrolmen of this State, and a finding is made by the Juvenile Court that such persons are found to be delinquents under General Code, Section 1639-2, because of a particular traffic violation.

The Probate Judge has been paying over these fines to the County Law Library Association under General Code 3056-2. However, General Code 3056-3 and General Code 6307-108 and General Code 1181-5 appear as being pertinent to the disposition of the fines collected in the manner above set forth.

Secondly, I should like your opinion as to whether it makes any difference whether the juvenile is brought in by a state highway patrolman or some other county or village official on a traffic violation, as to the disposition of the fines arising therefrom.

Thirdly, how are fines distributed which are collected in Juvenile Court and arise from non-traffic violations?"

Section 3056-2, General Code, effective August 31, 1939, reads as follows:

"In each county of the state, all monies arising from fines and penalties levied, and from cash deposits, bail bonds and recognizances taken by the common pleas and probate courts of such county, which have been forfeited, on account of *offenses and misdemeanors* brought for *prosecution* in such courts in the *name of the state*, shall be retained and paid monthly by the clerk of such courts to the trustees of such law library associations, but the total sums so paid therefrom shall not exceed \$1,250.00 per annum, and when that amount shall have been paid to the trustees of such law library association, in accordance with the provisions of this section, then no further payments shall be required thereunder in that calendar year from the clerks of such respective courts." (Emphasis mine.)

Considering first the fines imposed by the juvenile court on children under eighteen years of age, it will be noted that fines, penalties, etc., which by the provisions of the section above quoted are to be paid over to the trustees of the law library association, are those arising "on account of offenses and misdemeanors brought for prosecution in such courts in the name of the state". So far as juvenile offenders are concerned, it does not appear that the juvenile court has any jurisdiction whatsoever to try or to impose fines upon children under eighteen years of age for any crimes or offenses prosecuted in the name of the state. Even though a juvenile offender should be brought into court because of a traffic violation, he is not there charged or chargeable with violation of the traffic laws.

The only jurisdiction the court has in such case is that arising under Section 1639-23, et seq., General Code, where a child is brought before the court on a complaint that it is either a delinquent, neglected, crippled or dependent child, or, under Section 1639-29, General Code, when a child charged with a felony or misdemeanor, is brought before the juvenile court, in either of which cases, pursuant to the provisions of the statutes, particularly Section 1639-30, the court may conduct a hearing of an informal nature not taking the form of a prosecution in the name of the state, and, according to the terms of that section not resulting under any circumstances in a conviction, or any of the incidents that usually flow from a conviction:

The court is not authorized by the statutes to hold a trial or pronounce a judgment of guilt. The courts may only make a finding that the child is delinquent, neglected or dependent, or otherwise within the provisions of the juvenile act, and if it finds a child to be delinquent and considers that it will be for the best interest of the child, it is provided that the "judge may impose a fine upon such child not exceeding twenty-five dollars or costs, or both." In case of felony, the court may transfer the case to the court of common pleas.

Section 1639-30, General Code, further provides in part as follows: No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court, except as provided in Section 1639-32, General Code. The disposition of any child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

The provisions of the Juvenile court act are reformatory and not penal. *Leonard v. Licker*, 3 O. App. 377. Delinquency has not been declared a crime in Ohio, and the Ohio juvenile act is neither criminal nor penal in its nature, but is an administrative police regulation of a corrective character; and while the commission of a crime may set the machinery of the juvenile court in motion, the accused was not tried in that court for his crime, but for incorrigibility. In *Re Januszewski*, 196 Fed., 123.

From this it seems evident that if a fine be imposed upon such juvenile pursuant to the authority of Section 1639-30, above discussed, it is not a fine arising from a prosecution in the name of the state for an offense or misdemeanor within the meaning of Section 3056-2, General Code, and it follows therefore that such fines if collected would not fall within the provisions of that section requiring payment to the law library association.

The only criminal jurisdiction which a juvenile court appears to have is against an adult for abusing a child or for contributing to the dependency, neglect or delinquency of a child, or for failure to support such child if he is by law under obligation to do so. (Sections 1639-16 and 1639-39, et seq., General Code.)

The question as to the disposition of fines and penalties arising in these cases depends upon a further construction of Section 3056-2 and a determination whether a juvenile court, established and created within the probate court, is so identified with the probate court as to make Section 3056-2 applicable to it in the matter of payment of fines, etc., to the law library association.

Section 1639-7, General Code, being part of the act establishing the juvenile courts, which became effective August 19, 1937, reads in part as follows:

"The juvenile court, or court of common pleas, division of domestic relations of any county, separately and independently created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter. Except in counties in which there now is, or may hereafter be created, a separate and independent juvenile court or court of domestic relations, there is hereby established and created *within the probate court*, a juvenile court, presided over by the probate judge, which shall be a court of record, and which shall exercise such powers and jurisdiction." (Emphasis mine.)

In an opinion which I rendered under date of November 27, 1939, found in Opinions of Attorney General for 1939, p. 2175, it was held:

“A juvenile court created within a probate court by virtue of Section 1639-7, General Code, is subject to the provisions of Section 3056-2, General Code, which requires the payment to the trustees of a county law library association of certain moneys therein specified collected by a probate court.”

Since that opinion was rendered, it was decided by the Common Pleas Court of Preble County that the juvenile court is a separate and distinct court and that the provisions of the statutes for appeal from the probate court have no application to the juvenile court. In *re Morningstar*, 24 O. O. 123.

Without questioning the soundness of that opinion on the subject presented to the court, I am still of the opinion, from an examination of various provisions of the General Code referring to the subject, that it was the intention of the Legislature to preserve, at least in a measure, the close relationship between the probate court and the juvenile court which, according to the terms of the statute, is “established and created within the probate court.”

Section 1639-7, above quoted, became effective August 19, 1937 (117 O. L. 520). Section 3056-2, which I have already quoted, was enacted in its present form in 118 O. L. 453, and became effective August 31, 1939. Long prior thereto the Legislature, in the adoption of the new Code of Criminal Procedure, stripped the probate court, as such, of all its criminal jurisdiction. It would therefore appear reasonable to assume that in enacting Section 3056-2 in its present form, requiring fines, penalties, etc., arising from prosecutions of state cases in the probate court, to be paid to the law library association, the Legislature must have had in mind that while the probate court, strictly speaking, had no criminal jurisdiction and therefore could have no opportunity to collect fines and penalties, yet having created the juvenile court “within the probate court” and having given it certain criminal jurisdiction, the fines and penalties arising from the exercise by it of such jurisdiction were to be paid along with the fines, etc., arising in the common pleas court to the law library association.

A general survey of Sections 3056, 3056-1, 3056-2 and 3056-3, General Code, all of which relate to payment of fines and penalties to the law library association, suggests that it was the apparent intent of the Legislature to require such contributions from all the courts and magistrates of the state who had jurisdiction in the trial of crimes or misdemeanors in which the state was interested.

Accordingly, it is my opinion that fines, penalties, etc., collected as a result of prosecutions in a juvenile court created and established within a probate court, arising from the prosecutions of adult offenders for offenses within the jurisdiction of such juvenile court, are to be paid, in accordance with Section 3056-2, to the law library association.

In this connection it might be noted that in an opinion rendered under date of January 31, 1940, Opinions Attorney General for 1940, p. 116, it was held that the maximum of \$1250 to be paid pursuant to Section 3056-2 by the probate and common pleas courts of the county refers to the aggregate collection by both of said courts and not to them severally.

You raise the question of the applicability of Sections 1181-5 and 6307-108 of the General Code in case of the arrest of juvenile offenders against traffic regulations. Section 1181-5 reads in part as follows:

"All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the 'state highway maintenance and repair fund' and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles."

This section was a part of the act establishing the state highway patrol (Section 1181-2 et seq., General Code). The powers and duties of the patrolmen are clearly limited by the act to the enforcement of laws relating to motor vehicles and traffic. Section 1181-3, General Code. Accordingly it seems to follow that the arrests by state highway patrolmen and the disposition of fines arising from such arrests, as provided in Section 1181-5, relate solely to violations of the laws last above referred to, and that this statute could not be invoked to cover fines imposed upon a child found delinquent.

This conclusion is strengthened by the language of Section 6307-108, which is a part of the traffic code enacted in 119 O. L. p. 766, and effective September 6, 1941. That section reads as follows:

"All fines collected under the provisions of this act shall be paid into the county treasury and, with the exception of that portion distributed under section 3056-3 of the General Code, shall be placed to the credit of the fund for the maintenance and re-

pair of the highways within such county, *provided*, however, that *all fines collected* from, or moneys arising from bonds forfeited by persons apprehended or *arrested by state highway patrolmen shall be paid* one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted, subject to the provisions of section 1181-5 of the General Code." (Emphasis mine.)

Here it seems clear that the Legislature was dealing only with fines collected for violation of the traffic laws. It would follow that fines assessed against a delinquent child, regardless of the character of the arresting officer, must be paid into the county treasury, pursuant to the provisions of Section 13454-4, General Code, which provides:

"Unless otherwise required by law, an officer who collects a fine shall pay it into the treasury of the county in which such fine was assessed * * *."

Section 3056-3, to which you refer, throws no light on the questions raised. That section has nothing to do with the action of courts or clerks of courts in disposing of fines, but deals solely with treasurers of municipalities or counties into whose hands moneys have come, arising from fines in certain classes of cases.

Specifically answering your questions, I am of the opinion:

1. Fines imposed by a juvenile court upon a juvenile delinquent under authority of Section 1639-30, General Code, are not fines imposed for offenses or misdemeanors prosecuted in the name of the state, as referred to in Section 3056-2, General Code, and therefore are not payable to the trustees of the law library association, but are to be paid, pursuant to the provisions of Section 13454-4, General Code, into the treasury of the county.

2. The fact that a child under eighteen years of age is brought into juvenile court by a state highway patrolman, and is by such court fined as a delinquent under authority of Section 1639-30, General Code, would not cause such fine to be disposed of as contemplated by Sections 1181-5 and 6307-108, General Code, but such fine should be paid into the county treasury pursuant to Section 13454-4 of the General Code.

3. Fines imposed by a juvenile court upon adults for offenses within the jurisdiction of that court, should be paid to the trustees of the law library association in accordance with the provisions of Section 3056-2, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.