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1. CHILD WELFARE BOARD—JUVENILE COURT—PLACEMENT AND SUPPORT OF CHILD—WHERE AGREEMENT ENTERED INTO, SECTION 3070-17 G. C., COURTS NOT DIVESTED OF JURISDICTION OVER OFFENSES—SECTIONS 1639-46, 13008, 13012 G. C.—PARENT MAY BE HELD CRIMINALLY LIABLE FOR SUPPORT OF MINOR CHILD.
2. JUVENILE COURTS—NO JURISDICTION OF FELONIES—NO JURISDICTION OVER OFFENSES DESCRIBED IN SECTIONS 13008, 13012 G. C.

SYLLABUS:

1. Where an agreement has been entered into pursuant to the provisions of Section 3070-17, General Code, such fact does not divest the courts of jurisdiction over offenses described in Sections 1639-46, 13008 and 13012, General Code, and the parent may be held criminally liable for failure to support a minor child as provided in said sections.

2. Juvenile courts have no jurisdiction of felonies.

3. Juvenile courts have no jurisdiction over offenses described in Sections 13008 and 13012, General Code.

Columbus, Ohio, July 23, 1946

Hon. James W. Blair, Prosecuting Attorney
Delaware, Ohio

Dear Sir:

Your request for my opinion reads:

“Where an agreement has been entered into with the parents of a minor child by the Child Welfare Board, pursuant to Section 3070-17, General Code, for the placement and support of said child, and when one of the parents fails to abide by said agreement by failing to make any payment for support, does the Juvenile Court still have jurisdiction in a prosecution for non-support under Section 1639-46, General Code?”

Does the Juvenile Court have jurisdiction under Section 13012, General Code, to punish for failure to abide by said agreement?

Where there has been such an agreement and failure to support, does the Common Pleas Court have jurisdiction in a prosecution under Section 13008, General Code?

In such case is the only jurisdiction in the Common Pleas Court under Section 13012, General Code?"

The first statute mentioned in your inquiry is Section 3070-17, General Code, which reads in part:

"The child welfare board shall, subject to the rules, regulations and standards of the division, have the following powers and duties for and on behalf of children in the county deemed by the board to be in need of public care or protective services:
* * *

(b) To enter into agreements with the parent, * * * respecting the custody, care or placement of any such child or any other matter, deemed to be in the interests of such child.

Section 3070-20, General Code, provides:

"The board shall, before entering into any agreement obligating the board with respect to the care of any child, determine the ability of the child, parent, guardian or other person to pay for the cost of such care, having due regard for other dependents. Such determination shall, if accepted by the parent, guardian or other person, be made a part of such agreement * * *."

Section 1639-46, General Code, reads in part:

"Whoever is charged by law with the care, support, maintenance or education of a legitimate or illegitimate child under eighteen years of age, and fails, neglects or refuses so to do, or who abandons such child, or beats, neglects, injures or otherwise ill-threats such child, or causes or allows him or her to engage in common begging and whoever is charged by law with the care, support, maintenance or education of a legitimate or illegitimate child under twenty-one years of age who is physically or mentally handicapped, and fails, neglects or refuses to care for, support, maintain or educate such child, upon complaint filed in a court, exercising the jurisdiction conferred to this chapter, may be, after trial and conviction, sentenced to imprisonment for not more than one year, or fined not more than five hundred dollars, or both, and the judge may order that such person stand committed until such fines and costs are paid, provided, that if he shall pay promptly each week to the court or to a trustee named by such court a sum to be fixed by it for such purpose, sentence may be suspended." (Emphasis added.)

Section 1639-7, General Code, reads in part:

"The juvenile court, or court of common pleas, division of domestic relations of any county, separately or independently

created, established and functioning as such by law, shall have and exercise the powers and jurisdiction conferred in this chapter.”

Thus it appears that the court exercising jurisdiction conferred in this chapter, as provided in Section 1639-7, General Code, has jurisdiction of the offense described in Section 1639-46, General Code. However, it is to be noted that the offense described in Section 1639-46, is not the failure to abide by the agreement described in Sections 3070-17 and 3070-20, General Code. The gravamen of the offense is the failure, neglect or refusal to care for, support, maintain or educate such child or the abuse or other ill-treatment of such child, and it is obvious that such proceeding may be had regardless of whether or not an agreement by the parent to defray the cost of the care of such child within such parent's determined ability to pay, as provided in Sections 3070-17 and 3070-20, General Code, has been entered into.

By the provisions of Section 3070-19, General Code, “the board shall have the capacity possessed by natural persons to institute proceedings in any court.” Under this provision a civil action could be instituted by the child welfare board upon breach of an agreement entered into under authority of Section 3070-17, General Code. Such civil action would not be brought under purview of Section 1639-46, General Code, but would, of course, be independent of, and could be in addition to, any such criminal proceedings as is provided under Section 1639-46, General Code, and other sections to be discussed later in this opinion.

In this connection it should be borne in mind that a person who is not responsible by law for the care, maintenance and support of a child, while capable of creating civil liability by entering into such agreement, would not, however, subject himself to criminal liability thereby. Criminal proceedings would be effective for the reason that the person charged was responsible by statute, and not for the reason that he assumed responsibility by contract.

Therefore, in specific answer to your first question you are advised that in my opinion a juvenile court has jurisdiction in a prosecution for non-support under Section 1639-46, General Code, whether or not an agreement has been entered into between the parents of a minor child and the child welfare board pursuant to the provisions of Section 3070-17, General Code.

Your second question concerns the jurisdiction of the juvenile court under Section 13012, General Code. That section was last amended by the 96th General Assembly, effective January 1, 1946, as were Sections 3070-17, 3070-19, 3070-20 and 1639-46, already referred to in this opinion. Section 13012 reads:

“Whoever, being the father, or when charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under eighteen years of age, being legally a ward of a county child welfare board or a county department of welfare, neglects or refuses to pay to such board or department the reasonable cost of maintaining such child when able so to do by reason of property, or by labor or earnings, shall be imprisoned in a jail or workhouse at hard labor for not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years.”

Since imprisonment in the penitentiary may be enforced under said section, the crime defined thereby is a felony. See *McKelvey v. State*, 97 O. S. 1, and *Seaman v. State*, 106 O. S. 177.

A juvenile court is accorded limited jurisdiction and the extent and nature of such jurisdiction must be determined from the statutes. Section 1639-16, General Code, reads in part:

“(a) The court shall have exclusive original jurisdiction under this chapter or under other provisions of the General Code:

1. Concerning any child who is (1) delinquent, (2) neglected, (3) dependent, crippled, or otherwise physically handicapped.

2. To determine the custody of any child not a ward of another court.

3. To determine the paternity of any child alleged to have been born out of wedlock and to provide for the support of such child, subject to the concurrent jurisdiction of other courts as provided by law.

(b) The court shall have original jurisdiction to determine all cases of misdemeanors charging adults (1) with contributing to, encouraging or tending to cause by any act or omission, the delinquency, neglect or dependency of any child, or (2) with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance; or (3) with desertion, abandonment or failure to provide subsistence to any child for which he is legally responsible.”

With reference to the above language, it was pointed out in the case of *In re Cooper*, 134 O. S. 40:

“The foregoing language clearly means exclusive original jurisdiction concerning any ‘child’ from the standpoint of the child.”

The part of said section relating to adults is found in said section 3(b) of Section 1639-16 and reads as follows:

“The court shall have original jurisdiction to determine all cases of misdemeanors charging ‘adults’ with offenses toward minors.”

The juvenile court code does not attempt to confer jurisdiction of felonies upon the court exercising such powers and jurisdiction as are conferred by that chapter. See *Akers v. State*, 8 O. L. Abs. 106, and *Gerak v. State*, 22 O. App. 357. On the contrary, as was pointed out in the case of *In re Cooper*, *supra*, those statutes appearing in the criminal code which deal with offenses against minors approach the problem from the standpoint of the adult, while Section 1639-46 and other parts of the juvenile court code approach the problem from the standpoint of the child.

Furthermore, the offense described in Section 13012, General Code, is not the violation of an agreement entered into pursuant to Section 3070-17, General Code, it is the refusal or neglect to pay the child welfare board the reasonable cost of maintenance of such child “when able so to do by reason of property or by labor or earnings.”

The Constitution of this state has not fixed the jurisdiction of the courts of common pleas but by Section 4 of Article IV thereof has provided that the “jurisdiction of courts of common pleas, and of the judges thereof, shall be fixed by law.” Pursuant to the authority thus conferred by the Constitution, the Legislature has declared by Section 13422-5, General Code, that “the court of common pleas shall have original jurisdiction of all crime and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the courts of common pleas.”

Therefore, in specific answer to your second question you are advised that in my opinion juvenile courts have no jurisdiction under Section

13012, General Code. The fact that an agreement has been entered into pursuant to Section 3070-17, General Code, does not change the nature of the punishment for the offense charged under said section and exclusive jurisdiction of felonies is vested in the court of common pleas.

Your third question is as to the jurisdiction of the courts of common pleas under Section 13008, General Code, where an agreement has been entered into between the parent and the child welfare board pursuant to Section 3070-17, General Code. Section 13008 reads as follows:

“Whoever, being the parent, or other person charged by law with the maintenance of a legitimate or illegitimate child under eighteen years of age, or of a physically or mentally handicapped child under twenty-one years of age, or the husband of a pregnant woman, living in this state, fails, neglects or refuses to provide such child or such woman with the necessary or proper home, care, food and clothing, shall be imprisoned in a jail or work-house at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years.”

What I have previously said concerning the jurisdiction of juvenile courts and courts of common pleas under Section 13012, General Code, is equally applicable to Section 13008, General Code. While the latter section describes an offense by reason of the failure, neglect or refusal to provide a proper home, care, food and clothing for a child under eighteen years of age, a physically or mentally handicapped child under twenty-one years of age, or a pregnant woman, Section 13012 is limited to those instances where the parent fails, neglects or refuses to pay the reasonable cost of maintaining a child under eighteen years of age who is legally a ward of the county welfare board or county department of welfare. A charge based upon a violation of Section 13008, General Code, would not be predicated upon the failure to abide by the agreement entered into by the provisions of Section 3070-17, General Code.

Therefore, in specific answer to your third question you are advised that in my opinion jurisdiction of the offense described in Section 13008 is vested in the court of common pleas. Such court is not divested of such jurisdiction by reason of an agreement entered into pursuant to Section 3070-17, General Code; where such an agreement has been entered into and there is a failure to furnish support a prosecution under the pro-

visions of Section 13008 would be within the jurisdiction of the court of common pleas.

The last question is, "In such case, is the only jurisdiction in the common pleas court under Section 13012, General Code?"

I believe this question has been answered by pointing out that courts of common pleas have original jurisdiction of felonies. Therefore, in answer to your inquiry, you are advised that in my opinion:

(1) A juvenile court has jurisdiction in the prosecution for non-support under Section 1639-46, General Code, even though an agreement for support may have been entered into between the parent and the child welfare board pursuant to the provisions of Section 3070-17, General Code.

(2) Since the offense described in Section 13012, General Code, is a felony and the juvenile court has no jurisdiction of felonies, a prosecution under said section may not be had in the juvenile court. The offense described in Section 13012, General Code, is a neglect or refusal to pay the reasonable cost of maintenance of a child legally a ward of the county welfare board or a county department of welfare, and not a violation of an agreement entered into between said parties pursuant to Section 3070-17, General Code.

(3) The fact that an agreement has been entered into pursuant to the provisions of Section 3070-17, General Code, does not, upon failure of the parent to support such child, either divest the court of common pleas of jurisdiction in a prosecution under Section 13008, General Code, or invest the court with such jurisdiction. Said section describes a felony and juvenile courts have no jurisdiction of felonies.

Respectfully,

HUGH S. JENKINS,
Attorney General