

thority to fix the fees for violation of its municipal laws. The scheme of legislation recognizes the distinction between the jurisdiction, powers and duties of the mayor, and such as he exercises as an ex-officio justice of the peace. * * *

It would seem, therefore, that * * * 'all fees pertaining to any office,' under the rule established in *Ravenna vs. Penn. Co.* (45 O. S. 118) refers to municipal fees or such that may be fixed and controlled by municipal authority."

Specifically answering your question, it is my opinion that the Judge of the Municipal Court of Conneaut is not required by the provisions of Section 4213, General Code, to pay into the city treasury fees received by him for the performance of marriage ceremonies.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3439.

MINOR—BETWEEN AGES SIXTEEN AND TWENTY-ONE YEARS—WHERE ACT COMMITTED WOULD BE A FELONY IF COMMITTED BY ADULT—SECTION 1639-2 G. C. PROVIDES JURISDICTION MAY BE TRANSFERRED FROM JUVENILE COURT TO COMMON PLEAS COURT—COMMITMENT—IF CASE NOT TRANSFERRED, JUVENILE COURT MAY COMMIT MINOR TO INSTITUTIONS MENTIONED IN SECTION 1639-30 G. C.

SYLLABUS:

1. *The case of a boy between the ages of sixteen and twenty-one who has committed an act which, if committed by an adult would be a felony, may be transferred, under the provisions of Section 1639-32, General Code, to the Common Pleas Court. If the said boy is found guilty of the felony charged, it is then the duty of the court to commit the boy to the Ohio State Reformatory in accordance with Section 2131, General Code.*

2. *If the juvenile court decides not to transfer the case of a boy between the ages of sixteen and twenty-one who has committed an act which, if committed by an adult would be a felony, but determines that*

the case should be disposed of by the juvenile court, the judge may commit the delinquent boy to any of the places and institutions, penal or otherwise, mentioned in Section 1639-30, General Code

COLUMBUS, OHIO, December 22, 1938.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: This is to acknowledge receipt of your recent communication in which you request an opinion as to the authority of the juvenile courts of the State of Ohio in regard to committing boys over sixteen years of age, who have committed acts which, if committed by an adult, would be a felony. More particularly you want an expression in regard to the power of the juvenile courts in sentencing boys to the Ohio State Reformatory and the Boys' Industrial School.

The Ohio State Reformatory is an institution designed to take care of young offenders who, but for their age, should be incarcerated in the Ohio State Penitentiary. It was thus created for the purpose of segregating young criminals from older criminals.

The Boys' Industrial School on the other hand is a correctional institution of a type that is designed to provide for educational and industrial training of delinquent boys, with a view toward adjusting them to society.

A consideration of Section 2131, General Code, quoted in your letter convinces me that it does not relate to commitments by juvenile courts. This section reads as follows:

"The superintendent shall receive all male criminals between the ages of sixteen and thirty years sentenced to the reformatory, if they are not known to have been previously sentenced to a state prison. Male persons between the ages of sixteen and twenty-one years *convicted of felony* shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory." (Italics the writer's.)

The above indicated conclusion is impelled by a consideration of the following portion of Section 1639-30, General Code:

"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." (Italics the writer's.)

By reason of the authority of this statutory provision, I do not believe that adjudications by the juvenile courts place the boys involved in the category of persons described by Section 2131, namely, "male persons between the ages of sixteen and twenty-one years convicted of felony".

However, under Section 1639-32, General Code, juveniles under certain circumstances can be transferred to the Common Pleas Court for trial. This section reads as follows:

"In any case involving a delinquent child under the provisions of this chapter who has committed an act which would be a felony if committed by an adult, the judge after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person or persons, qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in this chapter in disposing of such case."

If a boy is transferred to the Common Pleas Court in accordance with the provisions of Section 1639-32, then the provisions of Section 2131 do apply. However, you will notice that it is discretionary with the juvenile court whether or not the cases shall be transferred and if the judge of the juvenile court does not see fit to transfer the case, the said judge "may exercise the other powers conferred in this chapter in disposing of such case".

Section 1639-30, sub-section 5, provides as follows:

"In case of a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory."

It is evident that the power conferred in this provision is discretionary. This I say not only because of the language employed in the particular provision, to-wit, "the judge may commit", but also because a consideration of the entire New Juvenile Court Code, sections 1639-1 to 1639-62, General Code, convinces me that the purpose underlying the act was to give to the juvenile courts broad powers to handle the individual cases in such a manner as will best protect the interests of society and yet be for the best interests of the children involved.

In so far as the Ohio State Reformatory is concerned, therefore, it is my opinion that if a boy between sixteen and twenty-one years of age is transferred to the Court of Common Pleas and is there found guilty of the commission of a felony he could properly only be committed to the Ohio State Reformatory in accordance with Section 2131. However, if a boy over sixteen years of age is not transferred to the Common Pleas Court and his case is disposed of by the judge of the juvenile court in accordance with the provision of the last clause of Section 1639-32, it is then a matter of discretion for the particular judge whether the boy shall be committed to the Ohio State Reformatory or elsewhere.

In regard to the commitment by a juvenile court to the Boys' Industrial School, Section 2084 reads as follows:

"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 as designated by the laws for juveniles. No youth having a contagious or infectious disease shall be so committed."

If the particular judge of the juvenile court is of the opinion that a commitment to the Boys' Industrial School will be the best manner of handling the particular case, he may make such a commitment whether or not the boy has committed an act which if committed by an adult would be a felony and the only limitation is that found in Section 1639-31, General Code, which reads as follows:

"No child not delinquent, nor any child under ten or over eighteen years of age shall be committed to an industrial school maintained by the state except as provided in the next preceding section."

In my opinion the court is not limited, in considering the case of a boy who has committed an act which if committed by an adult would

be a felony, to the alternatives of commitment to the Ohio State Reformatory or the Boys' Industrial School.

Section 1639-2, General Code, defines in part a delinquent child as follows:

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

1. Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state."

Section 1639-30, General Code, then confers the following powers upon the juvenile courts, in addition to that set forth in Paragraph 5 thereof above quoted, in regard to a child who is found to be delinquent:

"1. Place the child on probation or under supervision in its own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;

2. Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare and authorized to care for children or to place them in suitable family homes;

3. If, in his judgment, it is for the best interests of a delinquent child, the judge may impose a fine upon such child not exceeding \$25.00 or costs, or both, and if such child is over fourteen years of age, he may order such child to stand committed until such fine and costs are paid.

4. Make such further disposition as the court may deem to be for the best interests of the child, except as herein otherwise provided."

It is, therefore, my opinion that if the judge of a juvenile court sees fit to retain jurisdiction over the case of a boy who has committed an act which if committed by an adult would constitute a felony, he may dispose of the case in any of the ways authorized by Section 1639-30, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.