

It is likewise noted that the money necessary to pay the purchase price of this property has been released by the Board of Control, which action on the part of said board is evidenced by its certificate under date of November 4, 1929.

I am herewith returning to you with my approval, said corrected abstract of title, warranty deed, encumbrance estimate No. 792, Controlling Board's certificate and other files relating to the purchase of said property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2486.

COUNTY LAW LIBRARY—DOMESTIC RELATIONS COURT—FINES AND PENALTIES COLLECTED IN SUCH COURT ACCRUE TO THE USE OF LAW LIBRARY ASSOCIATION.

SYLLABUS:

Fines and penalties assessed and collected for offenses and misdemeanors prosecuted in the name of the State and growing out of convictions by the judge of the court of common pleas, division of domestic relations of Franklin County, Ohio, when exercising the powers provided for in Chapter 8, of Title 4, of Part I of the General Code or elsewhere in said Code, relating to juvenile courts, should be paid to the trustees of the law library association of Franklin County, as are other fines and penalties assessed and collected for offenses prosecuted in the name of the State in the common pleas and probate courts of the county, to the extent and within the limitations provided for in Section 3056, General Code.

COLUMBUS, OHIO, October 29, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

"You are respectfully requested to furnish this department with your written opinion upon the following matter:

Section 1532-7, G. C., 112 O. L. 58, provides for the election of an additional judge of the court of common pleas of Franklin County and further provides for his jurisdiction. Section 3056, as amended, 113 O. L. 249, provides that in all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors shall be retained and paid monthly by the clerk of such courts to the trustees of the law library association.

Question: In exercising jurisdiction in juvenile cases by such judge of the court of common pleas, division of domestic relations, are such fines and penalties payable to the law library association?"

Section 3056 of the General Code as amended by the 88th General Assembly, 113 O. L. 249, in the first paragraph thereof provides for the distribution to the law library association of a portion of the fines and penalties assessed and collected by a municipal or police court in state cases.

The second paragraph of said section provides:

"In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prose-

cuted in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such library association, but the sum so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred dollars per annum. The money so paid shall be expended in the purchase of law books and the maintenance of such association."

In 1927 there was enacted an act entitled: "An act to supplement Section 1532 of the General Code by the enactment of supplemental Section 1532-7, creating a division of domestic relations of the common pleas court of Franklin county." (112 O. L. 58). Said Section 1532-7, as enacted in 1927, was amended in 1929 (113 O. L. 106), to read as follows:

"From and after the passage and taking effect of this act there shall be one additional judge of the court of common pleas in and for Franklin county who shall reside therein.

Such additional judge shall be elected in 1928 and every six years thereafter, for a term of six years, commencing on the first day of January next after such election.

Vacancies occurring in the office of such additional judge in Franklin county shall be filled in the manner prescribed for the filling of vacancies in the office of judge of the court of common pleas.

Such judge shall have the same qualifications and shall receive the same compensation as is provided by law for the judges of the court of common pleas in Franklin county. Such judge shall exercise the same powers and have the same jurisdiction as is provided by law for judges of the court of common pleas. Such judge and successors shall, however, be elected and designated as a judge of the court of common pleas, division of domestic relations, and all the powers provided for in title 4, chapter 8 of the General Code or elsewhere in said Code, relating to juvenile courts shall be exercised in Franklin county by such judge of said court of common pleas, and on and after the beginning of the term for which such judge is elected, there shall be assigned to said judge and successors elected or appointed in pursuance of this act, all cases under the juvenile court act, all bastardy cases over which the juvenile court of Franklin county now has jurisdiction and all divorce and alimony cases in said county.

And whenever such judge of the court of common pleas, division of domestic relations, shall be sick, absent or unable to perform his duties, or any part thereof, the duties of said office shall be performed by another judge of the court of common pleas of said county, assigned for said purpose, according to law."

The substantial legal question involved in your inquiry is whether or not fines and penalties imposed by the judge, provided for by Section 1532-7, *supra*, when exercising jurisdiction provided for in title 4, chapter 8 of the General Code, or elsewhere in said code relating to juvenile courts, are fines and penalties assessed and collected by a common pleas court, as the term "common pleas court" is used in Section 3056, *supra*.

Undoubtedly, the reference in Section 1532-7, General Code, to title 4, chapter 8 of the General Code, is intended to be to title 4, chapter 8 of part 1 of the General Code. Chapter 8, title 4, part 1 of the General Code (Sections 1639 to 1683-10, General Code) relates to the jurisdiction of courts with respect to offenses defined in said chapter.

The first reference to a "juvenile court" in the statutes of Ohio, was in an act of the legislature enacted in 1902 (95 O. L. 785) entitled: "An Act to establish a juvenile court in certain counties and to regulate the control of delinquent and neglected children." Section I of this act, carried into the statutes as Section 548-37, Revised Statutes, read as follows:

"In all counties containing, by the federal census of 1900, a city having a population of more than 380,000, and also containing a court of insolvency, said court of insolvency in addition to the jurisdiction now conferred upon it, shall have original jurisdiction in all cases coming under the provisions of this act. The findings of the court in all cases under this act shall be recorded in a separate book to be known as the 'juvenile record', and this court may also for convenience be called the 'Juvenile court. * * *'"

In 1904, the General Assembly passed a general act relating to dependent, neglected and delinquent children and fixing the jurisdiction of courts in dealing with questions relating to such matters. (97 O. L. 561). The act was entitled: "An Act to regulate the treatment and control of dependent, neglected and delinquent children." Sections 2 and 3 of the act read as follows:

Sec. 2. "The courts of common pleas, probate courts, and where established, the insolvency and superior courts of those counties in this state, wherein three or more judges of the common pleas court regularly hold court concurrently, shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this bill any person interested therein may demand a jury or the judge of his own motion may order a jury to try the case."

Sec. 3. "The judges of the common pleas court, in counties wherein three or more such judges regularly hold court concurrently, together with the probate judge and the judges of the superior and insolvency court, where such courts or either of them exists, shall, at such times as they may determine, designate one of their number, whose duty it shall be to hear and determine all cases coming under this act, in a tribunal having jurisdiction within said county, to be called the juvenile court. A special room, not to be used for the trial of either criminal matters where avoidable, shall be provided for the hearing of such cases, and the orders, judgments and findings of such court shall be entered in a separate book or books, known as the 'juvenile record,' which shall be kept by the clerk of said common pleas or other court whose judge may be so designated, who shall be clerk of such juvenile court."

It was provided in Section 22 of the act, as follows:

"Nothing herein shall be taken or held to repeal or affect the provisions of an act entitled 'An act to established a juvenile court in certain counties, and to regulate the control of delinquent and neglected children,' passed April 18, 1902 (95 O. L. 785)."

The aforesaid act of 1904 was amended in some respects in 1906 (98 O. L. 314). In 1908, upon the enactment of an act entitled: "An Act to regulate the treatment and control of dependent, neglected and delinquent children, and to repeal certain acts therein named," the acts of 1904 and 1906, referred to above, were expressly repealed (99 O. L. 192).

In Section I of the aforesaid act of 1908, it was provided that courts of common pleas, probate courts, insolvency courts and superior courts, where established, shall have and exercise concurrently the powers and jurisdiction conferred in the act. The words "juvenile court" appear nowhere in the act except in Section 22 thereof, wherein it is provided that the compensation of the probation officer shall be paid by the county treasurer upon the warrant of the county auditor, which warrant should be issued upon itemized vouchers sworn to by said probation officers and certified to by the judge of the juvenile court.

Prior to the enactment of the act of 1908, there was probably some basis for holding that a "juvenile court" was a separate and distinct court from common pleas courts, probate courts and courts of insolvency. Upon the repeal of the former acts and the enactment of the Act of 1908, it is clear that even though a juvenile court, prior to that time, may have been properly considered as a separate and distinct court, that status did not continue to exist, as the act clearly states that the jurisdiction of juvenile offenses which formerly had rested in a juvenile court, was, upon the passage of the act, vested in courts of common pleas, probate courts, insolvency courts and superior courts, where established, concurrently.

The act of 1908 was amended in 1913 (103 O. L. 864), a part of which act relating to the jurisdiction of courts in juvenile matters was codified as Sections 1639, et seq., General Code. It was there provided that courts of common pleas, probate courts and insolvency courts and superior courts, where established, should have and exercise concurrently, the powers and jurisdiction conferred in the chapter, meaning chapter 8. It was further provided that the judge of such courts in each county at such times as they determine shall designate one of their number to transact the business arising under such jurisdiction. It was expressly provided that "the words 'juvenile court' when used in the statutes of Ohio shall be understood as meaning the court in which the judge so designated may be sitting while exercising such jurisdiction, and the words 'judge of the juvenile court' or 'juvenile judge' as meaning such judge while exercising such jurisdiction." The act has been twice amended since. (104 O. L. 178, 108 O. L., part 2, p. 1130).

The language with reference to juvenile courts quoted above, however, was retained in the last two amendatory acts, and is now contained in Section 1639 of the General Code. From this language it seems clear that the legislature did not intend by the use of the term "juvenile court" to signify a separate and distinct court, especially as to organization. It apparently uses the term to designate a certain jurisdiction which may be exercised by a common pleas court, probate court, or court of insolvency, as determined by statutes controlling the question.

In my opinion, No. 25, issued to the State Civil Service Commission of Ohio under date of January 25, 1929, which had under consideration the act creating a judge of the court of common pleas, division of domestic relations, in Franklin County, it was stated that:

"It is to be recognized that the juvenile court is not an office, separate and distinct from the judge who may be designated to exercise the prescribed jurisdiction of such court. Touching this point, Section 1639, General Code, contains the provision that the words juvenile court when used in the statutes of Ohio shall be understood as meaning the court in which the judge so designated may be sitting while exercising such jurisdiction, and the words 'judge of the juvenile court' and 'juvenile judge' as meaning such judge while exercising such jurisdiction.' Section 1640, General Code, provides that 'the seal of the court, the judge of which is designated to transact such business, shall be attached to all writs and processes.' In an opinion under date of March 16, 1914, directed to the prosecuting attorney of Hamilton

county, Reports of Attorney General, 1914, Vol. I, page 357, this department had under consideration the question of the authority of a common pleas judge of Hamilton county, sitting by designation in the juvenile court of said county, to appoint a court constable for service in the juvenile court. In said opinion of this department, after quoting from the opinions of the court in the cases of *Ex Parte Bank*, 1 O. S. 432, and *Mendelson vs. Miller*, 11 O. N. P. (N. S.) 586, it was said:

'Measured by the principles above stated, it is apparent that the juvenile court, so called, of Hamilton county, is not in any complete or proper sense, a separate and distinct court, either as to organization or jurisdiction, but is only a forum for the transaction of certain distributed business, concurrent jurisdiction of which is vested in the courts first specifically named in Section 1639.'

By reference to the act creating an additional judge in Franklin County, it seems clear that he is constituted a judge of the common pleas court. He is so referred to both in the title and the body of the act. By the amendment to the act made by the 88th General Assembly, it is provided that when he is sick the duties of the office shall be performed by "*another judge of the common pleas court of said county.*" (Italics the writer's.)

At no place in the said act is there anything that would indicate that when exercising so-called juvenile jurisdiction or any other jurisdiction, he does it in any other capacity than as a judge of the Common Pleas Court of Franklin County. I can gather no meaning from the act other than that any fines and penalties imposed by the judge created by the act, or any judgments rendered by him are by a judge of the common pleas court, whether he be at the time exercising the regular and general jurisdiction vested in common pleas courts or special jurisdiction vested in him as the judge of the Common Pleas Court of Franklin County, Division of Domestic Relations, in accordance with Section 1532-7, supra.

The language of Section 3056, supra, is clear, specific and without exception, to the effect that the fines and penalties assessed and collected by the common pleas and probate courts for offenses and misdemeanors prosecuted in the name of the State, shall be paid to the trustees of county law library associations in an amount not to exceed \$500.00 per year.

The judge of the Common Pleas Court of Franklin County, Division of Domestic Relations, provided for by Section 1532-7, General Code, is clearly in my opinion a judge of the Common Pleas Court at all times, and when fines and penalties are imposed by him while sitting in so-called juvenile cases those fines and penalties are assessed by a common pleas court and should, therefore, in my opinion, be paid to the trustees of the Franklin County Law Library Association in the same manner and to the same extent as are other fines and penalties assessed and collected by the probate and common pleas court of said county.

Respectfully,

GILBERT BETTMAN,
Attorney General.