

I am accordingly approving these leases as to legality and form, as is evidenced by my approval endorsed upon the several leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

871.

AMENDED SENATE BILL 286—JUVENILE COURTS—COMMON PLEAS COURTS, DIVISION OF DOMESTIC RELATIONS—PROBATE COURT ACTS IN JUVENILE MATTERS, WHEN.

SYLLABUS:

After the effective date of Amended Senate Bill No. 268, known as the new Juvenile Court Code, in all counties of Ohio not having a Juvenile Court or a Court of Common Pleas, Division of Domestic Relations, separately and independently created, established and functioning as such by law, all juvenile jurisdiction is reposed in a Juvenile Court within the Probate Court of such county to be presided over by the Probate Judge of such county.

COLUMBUS, OHIO, July 14, 1937.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

“I desire your opinion on the jurisdiction to be exercised by the Juvenile Court after the effective date of the Juvenile Court Code, being Amended Senate Bill 268.

Our county, Darke, is one of the very few counties in the state in which the Common Pleas Judge is exercising the jurisdiction over the Juvenile Court. His exercise of jurisdiction is neither by appointment nor election, as provided in Section 1639-58, but by designation as provided by original Section 1639, which provides that—

‘The judges of said courts in the county at such times as they determine shall designate one of their number to transact the business arising under such jurisdiction. When

the term of the judge so designated expires, or his office terminates, another designation shall be made in like manner. . . .'

The designation placed upon the journal in the Juvenile Court is dated January 5, 1933, and the term for which the Common Pleas Judge is elected will terminate the first Monday in January, 1939.

I desire your opinion as to where the jurisdiction of the Juvenile Court shall be reposed after the effective date of the new Juvenile Code, being Amended Senate Bill 268."

I note that your local judge is serving as Juvenile Judge of your county under designation as provided by original Section 1639, General Code, the pertinent provision of which is quoted in your letter.

This designation would carry the juvenile jurisdiction of the Common Pleas Court to the end of the present term, unless such jurisdiction was taken away by the authority having the power to confer it, namely, the General Assembly of the State of Ohio.

By the enactment of Amended Senate Bill No. 268, the General Assembly did that very thing. This Bill expressly repeals original Section 1639, General Code. The code sections were apparently carried into the original draft of this bill, inasmuch as they appear in the advance sheets and they will be referred to by section number. In order to determine the status of your local judge as to juvenile jurisdiction, it will be necessary to quote more at length from Section 1639, General Code:

"The juvenile court 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. In counties in which there is no such juvenile court, the courts of common pleas, probate courts, insolvency courts and superior courts where established, shall have and exercise concurrently such powers and jurisdiction. When such powers and jurisdiction are so had and exercised concurrently, the judges 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."

Amended Senate Bill No. 268 becomes effective August 20, 1937. Section 1639-7 of this Act provides as follows:

"The juvenile court, or a court of common pleas, division of domestic relations of any county, separately and indepen-

dently created, established and functioning as such by law, shall have and exercise the powers 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.” (Italics the writer’s).

Section 1639-58 of the Act provides, viz:

“Nothing herein contained shall be construed to affect the term of any judge of any court during the term for which he has been *elected or appointed*. Any case pending in a court exercising the powers and jurisdiction conferred under existing Section 1639 to 1683-1 of the General Code, shall be continued and transferred to the court succeeding in such powers and jurisdiction under this act, and such court shall have power and jurisdiction in such cases to hear, determine and make a record of said cause, as if legally commenced in such court.” (Italics the writer’s).

Let us not lose sight of the fact that the new Act repeals all the original sections defining the jurisdiction of the Juvenile Court. An entirely new juvenile jurisdiction is created by this Act and only such courts as are specifically named in the Act are invested with this jurisdiction, and the courts of common pleas are not in the category. Subsection 2 of Section 1639-60 of the Act provides:

“This act shall be known and cited as the juvenile court code.”

There are no provisos or exceptions in this Act and it can be given but one interpretation, namely, that the courts not included within the Act are excluded under the doctrine of “*expressio unius est exclusio alterius*.”

Answering your question specifically, I am of the opinion that after the effective date of Amended Senate Bill No. 268 the jurisdiction of all juvenile matters in Darke County will be reposed in the Probate Court of such county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.