

2016

COURTS: COMMON PLEAS, MUNICIPAL—JURISDICTION IN OFFENSES INVOLVING ADULTS CONCURRENT WITH JUVENILE COURT—OFFENSES UNDER §§2151.41, 2151.42 R.C.—1901 OAG 1950, p. 365, OVERRULED.

SYLLABUS:

The court of common pleas and municipal courts have jurisdiction in offenses involving adults, concurrent with that of the juvenile court, arising under Sections 2151.41 or 2151.42, Revised Code. Opinion No. 1901, Opinions of Attorney General for 1950 overruled.

Columbus, Ohio, April 29, 1958

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This letter is in reference to a former opinion by the Attorney General rendered June 16, 1950, and being Opinion Number 1901. This opinion sets forth that no court, other than the Juvenile Court, has jurisdiction of the subject matter of Sections 2151.41 and 2151.42, except those provided in Section 2151.07 (Absence of Juvenile Judge.)

"In that opinion it was held that Section 1639-39 of the General Code restricted jurisdiction of the subject matter of delinquency cases involving adults to the Juvenile Court. This section is now Section 2151.43 Revised Code which has been amended to set forth that the Juvenile Court is the court set forth in Section 1639-39 General Code exercising the powers of jurisdiction conferred in the Juvenile chapter.

"Although the above opinion cites the case of *In re Cooper*, 134 Ohio State 40, it would seem that the opinion is in conflict with that decision of the Supreme Court. Possibly the decision of the Supreme Court in the *Cooper* case says that Section 2151.43 Revised Code merely sets forth the procedure to be followed by a Juvenile Court, in delinquency cases, but does not restrict the jurisdiction of the Common Pleas Court, County Courts, or Municipal Courts, from exercising jurisdiction of the subject matter in delinquency cases involving an adult. I believe that *In re Evans*, 67 Appellate 66 is also in point.

"It has come to the attention of this office that numerous Municipal and County Courts are entertaining jurisdiction in delinquency cases involving an adult. In order to clear up this matter I would much appreciate your advising at your earliest convenience whether the Common Pleas Court, County Courts, and Municipal Courts, may proceed to exercise jurisdiction in any case involving an adult who has been charged with an offense under Sections 2151.41 and 2151.42 Revised Code."

Sections 2151.41 and 2151.42, Revised Code, to which you refer, read as follows:

Section 2151.41, Revised Code:

"No person shall abuse a child or aid, abet, induce, cause, encourage, or contribute to the dependency, neglect, or delin-

quency of a child or a ward of the juvenile court, or act in a way tending to cause delinquency in such child. No person shall aid, abet, induce, cause, or encourage a child or a ward of the court, committed to the custody of any person, department, public or private institution, to leave the custody of such person, department, public or private institution, without legal consent. Each day of such contribution to such dependency, neglect, or delinquency is a separate offense."

Section 2151.42, Revised Code:

"No person charged with the care, support, maintenance, or education of a legitimate or illegitimate child under eighteen years of age shall fail to care for, support, maintain, or educate such child, or shall abandon such child, or shall beat, neglect, injure, or otherwise ill-treat such child or cause or allow him to engage in common begging. No person charged 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 shall fail to care for, support, maintain, or educate such child. Such neglect, nonsupport, or abandonment shall be deemed to have been committed in the county in which such child may be at the time of such neglect, nonsupport, or abandonment. Each day of such failure, neglect, or refusal shall constitute a separate offense."

These sections were numbered Sections 1639-45 and 1639-46 respectively, as they appeared in the General Code. In both codes they have been placed in chapters entitled "Juvenile Court." Chapter 2151, Revised Code. They were enacted in 1937, in an act found in 117 Ohio Laws, 520, and entitled: "An Act to revise, consolidate and codify the juvenile laws of the state of Ohio by enacting sections 1639-1 to 1639-60, General Code, inclusive; and to repeal sections 1639 to 1683-1, inclusive, of the General Code of Ohio, relating to minor children."

The juvenile court was set up by the same act. Section 1639-16, General Code, defined the jurisdiction of the juvenile court. As that section now appears with little change in Section 2151.23, Revised Code, it reads in part:

"(A) The juvenile court has *exclusive original* jurisdiction under the Revised Code:

(1) Concerning any child who is a juvenile traffic offender or who is delinquent, neglected, 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;" (Emphasis added)

Note that as to these matters dealing with the welfare of the child, the court is given *exclusive* jurisdiction. The same section proceeds as follows:

"(B) Such court has *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;

(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*; * * *"

Here it is to be noted that the juvenile court is given "original" jurisdiction, but not "exclusive" jurisdiction over any act with respect to children which is a "violation of any state law or any municipal ordinance." This appears to be a clear recognition by the legislature, of the concurrent jurisdiction of the other courts who have jurisdiction over violation of state laws or municipal ordinances.

As to procedure in charges against adults for offenses arising under Chapter 2151. aforesaid, it is provided in Section 2151.43, Revised Code:

"In cases against an adult under sections 2151.01 to 2151.54, inclusive, of the Revised Code, any person *may file an affidavit with the clerk of the juvenile court* setting forth briefly, in plain and ordinary language, the charges against the accused who shall be tried thereon. In such prosecution an indictment by the grand jury or information by the prosecuting attorney shall not be required. The clerk shall issue a warrant for the arrest of the accused, who, when arrested, shall be taken before the juvenile judge and tried according to such sections.

"The affidavit may be amended at any time before or during the trial.

"The judge may bind such adult over to the grand jury, where the act complained of constitutes a felony."

This section plainly refers to a prosecution brought in the juvenile court, but there is nothing in it which in any way makes prosecution in that court the exclusive remedy.

Section 2151.99, Revised Code, relates to penalties for violation of Sections 2151.41 and 2151.42, *supra*. It reads as follows:

“(A) Whoever violates section 2151.41 of the Revised Code shall be fined not less than five nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both.

(B) Whoever violates section 2151.42 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year or both. The juvenile judge may order that such person stand committed until such fines and costs are paid; provided that if he pays promptly to the juvenile court each week or to a trustee named by such court a sum to be fixed by it for such purpose, sentence may be suspended.”

While there is a reference to the juvenile court, there is nothing in the section which gives that court any exclusive power to impose the prescribed penalties.

It seems well, at this point, to note the provision of the statute as to the criminal jurisdiction of the court of common pleas. Section 2931.03, Revised Code, reads as follows:

“The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.”

As to municipal courts, Section 1901.20, Revised Code, provides:

“The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory and of any misdemeanor committed within the limits of its territory. In all such prosecutions and cases, the court shall proceed to a final determination thereof. * * *”

The case of *In re Cooper*, 134 Ohio St., 40, to which you refer, was upon a petition for a writ of *habeas corpus* by one who had been convicted by a municipal court for failing to provide his child with food, in violation of Section 12970, General Code, which provided:

“Whoever, having the control of or being the parent or guardian of a child under the age of sixteen years, wilfully aban-

dons such child, or tortures, torments, or cruelly or unlawfully punishes it, or wilfully, unlawfully or negligently fails to furnish it necessary and proper food, clothing or shelter, shall be fined not less than ten dollars nor more than two hundred dollars or imprisoned not more than six months, or both.”

The plaintiff’s claim was that the above section, part of the criminal code, was repealed by the statutes creating the juvenile court. The syllabus of the case reads as follows :

“Different statutes providing different penalties for offenses against minors will not be deemed inconsistent or in conflict with each other where the principal elements thereof are similar but are accompanied by varying circumstances aggravating or affecting the degree of such offenses.”

As to plaintiff’s contention, the court said at page 46 of the opinion :

“It is claimed that Section 12970 was repealed by virtue of the jurisdiction conferred by Section 1639-7 in language as follows : ‘The Juvenile Court, or the Court of Common Pleas, division of domestic relations of any county, * * * shall have and exercise the powers and jurisdiction conferred in this chapter.’ Even though Section 12970 is not in the Juvenile Court Code, it is urged that the foregoing gives to the Court of Common Pleas, division of domestic relations, exclusive jurisdiction of the offense charged in the instant case. A more minute inspection of Section 1639-16 does not so indicate. That section says that court shall have exclusive original jurisdiction, ‘concerning any child who is (1) delinquent, (2) neglected, (3) dependent, or (4) crippled.’ The foregoing language clearly means exclusive original jurisdiction ‘concerning any child’ from the standpoint of the child. The part relating to adults is found in subdivision 3b 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. Here the word ‘exclusive’ is not used. It will be observed therefore that *exclusive jurisdiction* is only conferred by the Juvenile Court Code with respect to offenses from the standpoint of the child. We find, therefore, no such conflict as would deprive the Municipal Court of Cincinnati of jurisdiction in the instant case.”

The court accordingly affirmed the judgment of the Court of Appeals refusing the writ of *habeas corpus* prayed for.

As to the 1950 opinion to which you call attention, I note the syllabus reading as follows :

“A judge of the court of common pleas may not proceed to hear and pronounce sentence on an adult guilty of acting in a way tending to cause the delinquency of a minor, except under such circumstances as are provided in paragraph two of Section 1639-7 of the Juvenile Court Code.”

The then Attorney General, while referring to the statutes which I have quoted and also to the above quoted language of the opinion in the Cooper case, evidently failed to observe the difference between “original” and “exclusive” jurisdiction, as those words are used in Section 2151.23, Revised Code, 1639-16, General Code. I feel that the reasoning of the court in the Cooper case is sound and I must therefore overrule Opinion No. 1901, Opinions of the Attorney General for 1950, p. 365.

In specific answer to your question, it is my opinion that the court of common pleas and municipal courts have jurisdiction in offenses involving adults, concurrent with that of the juvenile court, arising under Sections 2151.41 or 2151.42, Revised Code. Opinion No. 1901, Opinions of Attorney General for 1950, p. 365, overruled.

Respectfully,
WILLIAM SAXBE
Attorney General