

"Whoever is charged by law with the care, support, maintenance, or education of a minor under the age of eighteen years, and is able to support or contribute toward the support or education of such minor, fails, neglects, or refuses so to do * * *."

It will be noted that sections 1645, 1646 and 1648 G. C., specifically mention "step-parent" in connection with the word "parent," so that no question can arise as to those particular sections; and while the word "step-parent" is not used in connection with the word "parents" in section 1642 G. C., it is probable that the word "parents" in said section would include "step-parents," especially if the step-parents have the custody of the minor children; and it is probable that the word "parent" in some of the other sections may include "step-parents," but it does not appear that in any of said sections any obligation is placed upon the step-parents for the maintenance and education of their minor step-children, and the question as to whether or not the word "parent" means "step-parent" depends upon whether or not said meaning is consistent with the intent of the juvenile court chapter.

It is therefore the opinion of this department, and you are advised that:

1. A step-parent is generally not liable for the support, care, maintenance and education of a minor step-child in the same manner as if it is his own child.
2. The provisions of the juvenile court chapter generally apply to a step-parent in the same manner as to a real parent, providing said application is consistent with the intent of said chapter.

Respectfully,
C. C. CRABBE,
Attorney General.

2451.

AUTHORITY OF JUVENILE COURT—SECTIONS 1643 AND 1648 GENERAL CODE CONSTRUED.

SYLLABUS:

1. If a child has become a ward of the juvenile court before the age of eighteen years, and has been committed temporarily to a certified institution or agency, or to the division of charities, before that age, the juvenile court has power to recommit the child after it attains the age of eighteen years.
2. If a child has come into a juvenile court in accordance with the provisions of law, the court may terminate its jurisdiction before said child reaches the age of twenty-one years by permanent commitment, as provided in section 1643, and also by the approval or consent to adoption, as provided in paragraph C of section 8025 G. C.
3. The word "parent" may mean one or both parents, and it is not necessary that both or either of the parents be present in court in order to give the juvenile court jurisdiction to make legal commitment of a child, for permanent transfer of guardianship to a certified institution or agency.
4. A new citation to the parents or guardian is not necessary at the time a juvenile judge wishes to change a temporary order to a permanent one.

COLUMBUS, OHIO, May 6, 1925.

HON. JOHN E. HARPER, Director of Department of Public Welfare, Columbus, Ohio.

DEAR SIR:—Acknowledgement is hereby made of your recent communication, which reads:

"Sections 1643 and 1672 of the General Code indicate the length of time a child shall remain a ward of a juvenile court and how such power of the court may be terminated. We wish to raise the following questions for your consideration:

"1. If a child has become a ward of the juvenile court before the age of 18 years and has been committed temporarily to a certified institution or agency, or to the division of charities, before that age, has the court power to re-commit the child after the child attains the age of 18 years?

"A certain juvenile court in this state refuses to re-commit to this division any child who has attained the age of 18 years, even though said child was previously a ward of the division on a temporary commitment. The court further maintains that said child is no longer a ward of the court.

"2. If the above is true, we wish to ask: Where is the guardianship of the child vested during this period of time, from 18 to 21 years of age?

"3. If a child has come into a juvenile court in accordance with the provisions of law, by what method may the court terminate its jurisdiction over that child before the child reaches the age of 21 years?"

"Section 1648 of the General Code, the juvenile court chapter, gives certain instructions regarding citations, warrants, etc. We wish to raise the following questions in the interpretation of this chapter:

"1. Does the word 'parents' mean one or both parents, and if one parent only appears in court even though the child has two living parents, is the commitment of the juvenile court legal when said commitment is for permanent transfer of guardianship to a certified institution or agency?

"2. Has the juvenile court power to make a commitment for *permanent* care and custody without citing the parent, parents or guardian into court, even though previously such citations were issued for a hearing at which time an order for temporary care and custody was made? Must there be a new citation at the time a judge wishes to change a temporary order to a permanent one?"

You first inquire:

"If a child has become a ward of the juvenile court before the age of 18 years and has been committed temporarily to a certified institution or agency, or to the division of charities, before that age, has the court power to re-commit the child after the child attains the age of 18 years?"

This question was considered by this department in an opinion rendered to the board of state charities and found on page 1010, volume II, opinions of the attorney general, 1920, the syllabus of which reads:

"Dependent girls committed by the juvenile court to the temporary care and custody of the board of state charities remain under the legal control and guardianship of the court until they attain the age of twenty-one years, should such commitment for temporary care endure that length of time."

It is also stated in said opinion that:

"It is clear from a reading of section 1643 G. C. and section 1672 G. C., that dependent girls committed by the juvenile court to the board of state charities are of two classes; those committed for temporary care and custody, and those committed for permanent care and custody. As to the first

class the jurisdiction of the juvenile court is continuing, until the minor, whether male or female, attains the age of twenty-one years."

Your first question is therefore answered in the affirmative.
The above conclusion renders an answer to your second question unnecessary.
Your third question is:

"If a child has come into a juvenile court in accordance with the provisions of law, by what method may the court terminate its jurisdiction over that child before the child reaches the age of 21 years?"

Section 1643 G. C. provides when jurisdiction shall terminate, and reads as follows:

" * * * The power of the court over such child shall continue until the child attains such age. Provided in case such child is committed to the permanent care and guardianship of the Ohio board of administration, or the board of state charities, or of an institution or association, certified by the board of state charities, with permission and power to place such child in a foster home, with the probability of adoption, such jurisdiction shall cease at the time of commitment."

This provision is clear and needs no further comment. However, there is another provision by which the jurisdiction of the court shall cease before such child becomes twenty-one years of age. Such provision is contained in section 8025 G. C., which reads:

"In any adoption proceedings written consents must be given to such adoption as follows:

- "(a) * * *.
- "(b) * * *.

"(c) By the parent or person awarded the legal custody and guardianship by a juvenile court because of dependency, or because of the mental, moral or other unfitness of one or both parents; provided that such juvenile court approves of such consent whereupon the jurisdiction of such court over such child shall cease. * * *"

You also request the construction of section 1648 G. C., specifically inquiring as follows:

"Does the word 'parents' mean one or both parents, and if one parent only appears in court even though the child has two living parents, is the commitment of the juvenile court legal when said commitment is for permanent transfer of guardianship to a certified institution or agency?"

Section 1646 G. C., in defining "proper parental care," provides:

" * * * the word 'parent' may mean one or both parents or step-parents when consistent with the intent of this chapter."

Section 1648 G. C., pertaining to "citation, warrant, contempt," reads as follows:

"Upon filing of the complaint, a citation shall issue, requiring such minor to appear, and the parents or guardian or other person, if any, hav-

ing custody or control, of the child, or with whom it may be, to appear with the minor at a time and place to be stated in the citation; or the judge may in the first instance, issue a warrant for the arrest of such minor or for any person named in the complaint and charged therein with having abused or abandoned, or charged therein with neglect of or being responsible for or having encouraged, aided or abetted the delinquency or dependency of such child, or having acted in a way tending to cause delinquency in such child. A parent, step-parent, guardian or other person not cited may be subpoenaed to appear and testify at the hearing. Any one cited or subpoenaed to appear who fails to do so, may be punished as in other cases in the common pleas court for contempt of court. Whenever it shall appear from affidavit that a parent or guardian or other person having the custody of such child resides or has gone out of the state or that his or her place of residence is unknown so that such citation cannot be served on him or her, the clerk shall cause such citation to be published once in a newspaper of general circulation throughout the county, and published in the county, if there be one so published. The citation shall state the nature of the complaint, and the time and place of the hearing, which shall be held at least two weeks later than the date of the publication; and a copy of such citation shall be sent by mail to the last known address of such parent, guardian or other person having custody of such child, unless said affidavit shows that a reasonable effort has been made without success to ascertain such address. The certificate of the clerk that such publication has been made or such citation mailed shall be sufficient evidence thereof. Until the time for the hearing arrives, the court shall make such temporary disposition of such child as it may deem best. When said period of two weeks from the time of publication shall have elapsed, said court shall have full jurisdiction to deal with such child as provided by this chapter. When a person charged with violating a provision of this chapter shall have fled from justice in this state, such judge shall have all the powers of a magistrate under the laws of this state relating to fugitives from justice."

It is evident from the provisions of the foregoing section that while requirement is made that a citation issue for the parents or guardian or other person having custody or control of the child or with whom it may be, yet it is not necessary in order to give the court jurisdiction over the child that any of the above mentioned parties be present in court at the time of said hearing. It also appears that the minor may be arrested upon a warrant and that his parents or other parties may be subpoenaed as witnesses, and that if those who are subpoenaed fail to appear they may be punished as for contempt. It is further provided that if a parent or guardian or other person having the custody of such child resides or has gone out of the state, or that his place of residence is unknown, so that such citation cannot be served on him or her, such citation shall be published, and that the hearing shall be held in not less than two weeks from such publication, and also that when said period of two weeks from the date published has elapsed, said court shall have full jurisdiction to deal with such child as provided in this chapter, and to make all commitments which the juvenile court deems necessary.

In the case of Blier vs. Crouse, superintendent, page 453, O. C. A. for Hamilton county, it was held that:

"Service of citation upon the parent of a child in a proceeding under sections 1647 and 1648, General Code, is not a condition precedent to jurisdiction over the child."

The court also used the language following:

"It is a well settled principle of law that no one is bound by a personal judgment or order of a court, who is not made a party thereto, and has not had a day in court, except parties privy in interest. The petitioner is entitled to a day in court to have a determination of his rights regarding the custody of his children.

How, then, is he affected by the commitment of his children by the juvenile court?

Proceedings under the juvenile laws are modern and do not coincide with any proceeding known to the old law. See state vs. Hoffman, 31 O. C. A. * * *

The fundamental principle of the juvenile acts is conservation of the child. In the exercise of the power of *parens patriae* the legislature has established the juvenile court and delegated to it certain of its powers. There is no authority to support the contention that notice to the parent is a condition prerequisite to jurisdiction of the juvenile court over the child. An examination of the juvenile law as a whole leads us to the conclusion that the jurisdiction of the court attaches to the child without regard to the citation of the parent. This is so, not because the parent has forfeited any of his legal rights, but because in such case the police power of the state is paramount. When proceedings are regularly had in the juvenile court and there is a finding that the child is dependent, under section 1643, General Code, it becomes a ward of the court. In the interest of the child and in the interest of society the court can commit its custody to strangers, or to an institution for its moral training and education. * * * If the adoption proceedings have now rendered it impossible for the court to restore the children to petitioner, the responsibility rests not with the juvenile court, but with the parent who has delayed for so many years in asking for their restoration. If the laws which provide for the welfare of children generally and society as a whole operate to cause possible hardship in an individual case, that circumstance alone will not undo the laws which society has established for its own protection and betterment."

You next inquire:

"Has the juvenile court power to make a commitment for *permanent* care and custody without citing the parent, parents or guardian into court, even though previously such citations were issued for a hearing at which time an order for temporary care and custody was made? Must there be a new citation at the time a judge wishes to change a temporary order to a permanent one?"

As was before stated herein, section 1643 G. C. provides that:

"When a child under the age of eighteen years comes into the custody of the court under the provisions of this chapter, such child shall continue for all necessary purposes of discipline and protection, a ward of the court, until he or she attain the age of twenty-one years. The powers of the court over such child shall continue until the child attains such age. * * *"

It would, therefore, appear that since the jurisdiction of the court over the child does not depend in the first instance upon citation or notice having been given to the parent or guardian, notice or citation is not necessary in order to give jurisdiction to the court to modify an order previously made.

The authorities show that after a child has become a ward of the juvenile court, the court has authority to vacate its original order or modify the same or make such further and additional orders in relation thereto as may be just and proper.

Blier vs. Crouse, 31 O. C. A., page 458.

Summarizing—It is the opinion of this department, and you are so advised, that:

1. If a child has become a ward of the juvenile court before the age of eighteen years, and has been committed temporarily to a certified institution or agency, or to the division of charities, before that age, the juvenile court has power to recommit the child after it attains the age of eighteen years.

2. If a child has come into a juvenile court in accordance with the provisions of law the court may terminate its jurisdiction before said child reaches the age of twenty-one years by permanent commitment, as provided in section 1643, and also by the approval or consent to adoption, as provided in paragraph C of section 8025 G. C.

3. The word "parent" may mean one or both parents, and it is not necessary that both or either of the parents be present in court in order to give the juvenile court jurisdiction to make legal commitment of a child, for permanent transfer of guardianship to a certified institution or agency.

4. A new citation to the parents or guardian is not necessary at the time a juvenile judge wishes to change a temporary order to a permanent one.

Respectfully,

C. C. CRABBE,

Attorney General.

2452.

DISAPPROVAL, BONDS OF LAURELVILLE VILLAGE SCHOOL DISTRICT, HOCKING COUNTY, \$20,000.00.

COLUMBUS, OHIO, May 5, 1925.

Re: Bonds of Laurelville Village School District, Hocking County, \$20,000.00.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript for the above issue of bonds discloses that the issue is being made under the provisions of section 7625 G. C. for the purpose of repairing a non-fireproof school building.

The certificate of the clerk is to the effect that the life of the property and improvement referred to in the resolution is as follows:

"Repair of non-fireproof school houses, 20 years.

"Weighted average of years of usefulness, 20 years."

He further finds that the maximum maturity of the bonds given will not exceed such weighted average of twenty years, and in accordance with this certificate of the clerk, the last maturity of the bonds is made on September 15, 1944.

Section 2295-9, General Code, provides in part as follows: