

2237.

DELINQUENT CHILDREN—PAROLED BUT NOT FINALLY DISCHARGED FROM INDUSTRIAL SCHOOLS—NOT SUBJECT TO JURISDICTION OF JUVENILE COURT—SUPPORT CHARGEABLE TO STATE AND NOT COUNTY FROM WHICH THEY ARE COMMITTED.

SYLLABUS:

1. *When a child has been committed to the Boys' Industrial School or the Girls' Industrial School, it is under the supervision and jurisdiction of the Department of Public Welfare until it arrives at the age of twenty-one years, unless prior thereto it has been finally released and discharged as provided by law. And until it has been so released, a Juvenile Court would have no jurisdiction with reference to such child, and any order made with reference to such assumed jurisdiction would be void.*

COLUMBUS, OHIO, August 15, 1930.

HON. H. H. GRISWOLD, Director, Department of Public Welfare, Columbus, Ohio.

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"The following situation arises in the administration of the Boys' Industrial School and the Girls' Industrial School on which your official opinion is requested.

In the case of both schools, we often find a boy or girl who has no suitable home to which to go when paroled from the institution and in such cases we have requested the court of the county of his residence to commit the child to the Division of Charities for placement. Under the procedure in the Boys' and the Girls' Industrial Schools, an inmate is not finally released when allowed to go out on parole from the institution, but may remain in the custody of the department until twenty-one unless sooner discharged. This raises the question as to the legal effect of a commitment by a juvenile court to the Division of Charities while the individual in question is still on parole and under supervision of the state department by reason of a previous commitment of that court or some other court to the Boys' Industrial School. Specifically, we would like to be informed as follows:

(1) In case of a delinquent child committed to an industrial school paroled from the industrial school, but not finally discharged, what is the effect of the action of a juvenile court in committing this child to the Division of Charities?

(2) In case of such commitment, is there any bar to the possibility of charging back to the county of residence the support of the child in question in the same manner as though the commitment by the Division of Charities had not been preceded by a commitment to the Industrial School."

Section 1643, General Code, which relates to the jurisdiction of children coming into the custody of the Juvenile Court, provides in part:

"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 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. * * *

Section 1652, General Code, among other things, authorizes the Juvenile Court in the case of a delinquent child to,

" * * * commit such child, if a boy, to a training school for boys, or, if a girl, to an industrial school for girls, or commit the child to any institution within the county that may care for delinquent children. * * *

The section further provides that in no case shall a child committed to such institution be confined under such commitment after attaining the age of twenty-one years. From the above section, it appears that where a child comes into the custody of the Juvenile Court, it remains in the custody of said court unless it is committed to some institution under the supervision of the Department of Public Welfare. However, in connection with the foregoing sections, it will be necessary to consider the provisions of Sections 2083 et seq., of the General Code, which relate to the Boys' Industrial School and the commitment thereto, and Sections 2101 et seq., of the General Code, which relate to the Girls' Industrial School and commitment thereto, which said sections of course are in pari materia with the sections hereinbefore referred to, which give Juvenile Courts jurisdiction of delinquent children. Section 2083, General Code, hereinbefore mentioned, provides:

"The boys' industrial school, situated in the county of Fairfield, shall be maintained for the industrial and intellectual training of those admitted to its care. All youths committed thereto by the courts shall be committed until twenty-one years of age, unless sooner released by the school for satisfactory behavior and progress in training. The power to receive and discharge students and regulate their training and instruction shall be vested exclusively in the controlling administration department and the school shall be subject to such inspection as may be provided by law."

Section 2084-2, General Code, also provides:

"When a child has been received by the boys' industrial school under the provisions of this or other chapters on commitment by a Juvenile Court, or by transfer or assignment by the board, sole control of said child shall be in the school and the power and jurisdiction of the court shall cease."

Without discussing the various means whereby children may be committed to the Boys' Industrial School, it may be concluded that when they are so committed, all control of said children shall be in the school, and the power and jurisdiction of the courts cease. It is further apparent that under the provisions of Section 2083 and other related sections, such a boy may be released for satisfactory behavior, in the manner provided by law. It very clearly appears, by reason of the provisions of Section 2092, General Code, and its related sections, that such inmates may be paroled without being finally released.

Section 2112, General Code, which relates to the Girls' Industrial School, provides:

"A girl, duly committed to the school shall be kept there, disciplined,

instructed, employed and governed under the direction of the board, until she is either thought to be reformed or discharged, or bound out by the chief matron according to the by-laws of the institution, or has attained the age of twenty-one years. Provided that the board may discharge a girl as a reward of merit three months before she attains the age of twenty-one years. With the approval of the governor, after a full statement of the cause, the board may discharge and return to the parents, guardian, or Juvenile Court of the county from which she was committed, who may place her under the care of the infirmary superintendent of the county, any girl whom the board thinks ought to be removed from the school. In such case it shall enter upon its record the reason for her discharge, a copy of which, signed by the secretary, shall be forthwith transmitted to the Juvenile Court of the county from which the girl was committed."

From the above section, it would appear to be clear that when a girl has been committed to the Girls' Industrial School she is under the supervision and jurisdiction of the Department of Public Welfare until discharged or until she has attained the age of twenty-one years.

Section 2112-1, General Code, clearly authorizes the Department of Public Welfare to establish rules and regulations for the conditional release upon parole of such an inmate. However, when inmates of the Boys' Industrial School or the Girls' Industrial School are released upon parole, they may be taken back at any time.

It will be observed that the statute contemplates the permitting of inmates of said institutions to be placed in homes outside of the institution before the final release.

Section 2090, of the General Code, which relates to the Boys' Industrial School, provides :

"By observation and inquiry the record officer shall also collect social statistics bearing on the home environment of the inmates, seek homes and employment for such inmates as are entitled to release but are detained because of being orphans or homeless. Such officer shall keep and submit from time to time to the board a record of his proceedings. The term of his employment shall be subject to the discretion of the superintendent."

Section 2112-3, General Code, which relates to the paroling of inmates of the Girls' Industrial School provides among other things, that:

" * * * It shall be their duty to seek homes and employment for inmates who may be paroled, and to exercise a kindly supervision while upon parole. They shall also investigate the qualifications and ability of parents and other persons who seek to receive paroled or discharged inmates into their homes."

Also, Section 2116, General Code, provides:

"The chief matron may bind out, as an apprentice or servant, any girl committed to her charge, for a term not longer than until she arrives at the age of twenty-one years. The person to whom the girl is bound, by the terms of the indenture, shall be required to report to the chief matron as often as once each month, her conduct and behavior, and whether she is living under his care, and, if not, where she is."

It will therefore be seen that the entire supervision of the inmates of the two

industrial schools under consideration is in the Department of Public Welfare, irrespective of whether they are actually kept within the physical confines of said institution or are permitted to live at homes outside of the institution upon parole. Of course, if such children are finally released, the jurisdiction ends.

It is a well established proposition of law in this State that when one who is an inmate of a correctional or penal institution has been paroled under existing laws, it can not be said he has been discharged. Under such a procedure, the inmate remains in the custody of the institution as a matter of law just the same as if no parole had ever taken place, and such an inmate is subject to being returned to the institution at any time. It is believed that this principle is clearly established by reason of the decision in the case of *Morton vs. Thomas*, 27 O. A. R., 486.

In view of the foregoing and the statements in your communication, it would appear to be clear that so long as the management of the Boys' Industrial School and the Girls' Industrial School has not finally released or discharged an inmate committed thereto, it still has jurisdiction and custody over such inmate. It follows that under such circumstances, the Juvenile Court could not properly acquire jurisdiction. It further follows that any order made by a Juvenile Court under such circumstances would be void because of its not having jurisdiction. It is believed that the foregoing is dispositive of your first inquiry.

In your second question you in substance inquire whether, under circumstances where a Juvenile Court has undertaken to assume jurisdiction and commit such a child to the Board of State Charities, the support of such child may be charged to the county. Section 1815, of the General Code, which relates to the cost of supporting inmates in State Institutions, provides:

"All persons now inmates of, or hereafter admitted into, a benevolent institution except as otherwise provided in this chapter, and except as otherwise provided in chapters relating to particular institutions, shall be maintained at the expense of the state. They shall be neatly and comfortably clothed and their traveling and incidental expenses paid by themselves or those having them in charge."

In examining the statutes it will be found that nowhere is the expense of supporting such a child in a Boys' Industrial School or Girls' Industrial School otherwise provided for. In some instances provision has been made such as in the case of persons committed to the Feeble-Minded Institution wherein the county is required to support said inmate. However, as above indicated, there is no such provision with reference to those committed to the Industrial Schools. It follows therefore, that until there has been a final release of a child committed to an Industrial School, his status could not in any wise be changed as a matter of law with reference to his support therein. It is believed that the foregoing will dispose of your second question.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2238.

APPROVAL, BONDS OF STOKES TOWNSHIP RURAL SCHOOL DISTRICT, MADISON COUNTY, OHIO—\$2,800.00.

COLUMBUS, OHIO, August 15, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.