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JUVENILE COURT — AUTHORITY TO EXPEND PUBLIC FUNDS
TO PUBLISH AND DISTRIBUTE PAMPHLETS — SECTIONS 1683-
12 TO 1683-31 — 1639-1 TO 1639-61 G. C.

SYLLABUS:

The authority of the Juvenile Court to expend public funds to publish and distribute pamphlets under authority of Sections 1683-12 to 1683-31, inclusive, General Code and Sections 1639-1 to 1639-61, inclusive, General Code, discussed.

Columbus, Ohio, April 29, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

You request my opinion as to whether or not the Juvenile Court of Cuyahoga County may legally expend its funds for the publication and distribution of pamphlets of the type of which you inclose a copy. You state that your examiner informs you that copies thereof "have been distributed to various agencies and individuals as shown by the current mailing list". You then ask:

"May we respectfully request your opinion whether public funds may be expended by the Court for the printing and distribution of such a report."

From the additional inclosures accompanying your request it appears that during the years 1935, 1936, 1938 and 1940 several thousand booklets were printed for the court, along with mailing envelopes therefor, at the cost to the county of several hundred dollars. I am not informed as to the exact nature of such booklets.

For the purposes of this opinion, I am assuming that the brochures were both published and distributed at public expense. Upon such assumption, two questions of law arise out of your inquiry: First, whether such court which has been created by legislative enactment has been granted the power or authority to publish and distribute such pamphlets; second, whether the publishing and distribution of such pamphlets is a public purpose for which moneys derived from taxation may be expended.

In determining whether a public officer or agent has the power to perform specified acts, we must first inquire whether the office has been created by the constitution or by an act of the Legislature. If it has been created by the Constitution it may have certain powers which are not specified in the constitutional provision creating it, but which are inferred therefrom. In the adoption of a constitution it has been the policy to describe generally, rather than to particularize. Thus, in the Constitution, when an office is created, as, for example, that of the treasury of state, the constitutional provision does not designate the duties to be performed by the treasurer. Courts, however, infer that the framers of the Constitution intended that the treasurer is to perform the duties which were usually and ordinarily performed by the treasurer of state at the time of the adoption of the Constitution. Such powers are often referred to as inherent powers. He may, by virtue of statutory enactment, be also called upon to perform additional duties so imposed. The extent of such duties must be determined from the statutes which impose such duties.

In addition to the offices and agencies created by the Constitution, the Legislature has power to, and has created, other public offices. Thus, in Section 1 of Article IV of the Constitution, it is provided that:

“The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.”

There is no mention in the Constitution of the Juvenile Court. Its

powers and duties must, therefore, be determined from the statutes which create it. In construing the powers of an office created by the Legislature the courts have laid down specific rules to be followed. Thus, it is a well established rule of law that an incumbent of an office created by legislative enactment has such powers and such only as are granted to him by the express language of the statute or as are necessarily implied therefrom. *Peter v. Parkinson*, Treasurer, 83, O. S. 36; *Elder v. Smith*, Auditor, 103 O. S. 369.

To paraphrase the language of Mr. Justice Sutherland in *Federal Trade Commission v. Raladan*, 283 U. S. 643, 649, official powers can not be extended beyond the express terms and necessary implication of the grant. If broader powers be desirable, they must be conferred by the law-making body. They can not be assumed by administrative officers. Nor can they be created by the courts in the proper exercise of their judicial functions of interpretation.

The Juvenile Court of Cuyahoga County is purely a creature of statute. We must, therefore refer to the legislative enactments creating such instrumentality in order to determine the limits of its power and authority. Such court was established by an act codified as Sections 1683-12 to 6383-31 of the General Code. Such statutes provide for the organization of and define the jurisdiction of the court. In such act there are contained no specific provisions which require such court to either make or distribute any reports to the public. The General Assembly, however, has also enacted the "Juvenile Court Code" (Sections 1639-1 to 1639-62, General Code) which, in terms, provides that in so far as consistent with the provisions of Sections 1683-12 to 1683-31, General Code, it is to be applicable to the court under consideration (Section 1683-29, General Code). In such act, powers are specifically granted to the court to make certain records and promulgate certain rules. Section 1639-11 of the General Code reads:

"The court shall have power to frame and publish rules of procedure for the conduct of its officers and employes."

It would, therefore, seem that if the main and principal purpose of the publication is to establish and publish rules of procedure to guide the conduct of the officers and employes of the Juvenile Court, such publication is authorized by Section 1639-11 of the General Code.

In Section 1639-19, General Code, I find certain provisions of law requiring the probation department of the court to keep certain records. However, such section provides that:

“The reports and records of the department shall be considered as confidential information and shall not be made public.
* * *”

It would, therefore, seem that the publication of the records and reports of the probation department of the Juvenile Court may not be published and distributed to the public under authority of such section.

In section 1639-13, General Code, the Legislature has provided that:

“* * * The court shall devise and cause to be printed such forms for records and such other papers as may be required.”

In the case of *Ampt v. Cincinnati*, 2 O. N. P. (N. S.) 489, Judge Hosea had occasion to construe a somewhat similar provision of statute. In that case the facts recited indicate that the trustees of the waterworks had been granted authority to acquire “such other fixtures, appliances or facilities, as in their opinion are necessary”. Such learned judge held that such grant of power granted only the power to acquire such fixtures, appliances and facilities as would enable the trustees to perform the duties mandatorily placed upon them by the act. If such holding be correct, it would seem that the language “cause to be printed such * * * other papers as may be required” would only authorize the printing of such papers as will enable the court to perform only the specific mandatory duties required of it by statute.

In Section 1639-59, General Code, the Legislature has provided as follows:

“The purpose of this chapter is to secure for each child under its jurisdiction such care, guidance and control, preferably in its own home, as will serve the child’s best welfare and the best interests of the state. When a child is removed from its own family, it is the intent of this chapter to secure for such child, custody, care and discipline, as nearly as possible equivalent to that which should have been given by its parents. The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the dis-

cipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury, and to enforce the legal obligations due to them and from them. *To this end this chapter shall be liberally construed.*"

As stated by the court In Re Jessup, 81 Cal. 408, 419:

"'Liberal construction' does not mean enlargement or restriction of a plain provision of a written law. If a provision of the code is plain and unambiguous, it is the duty of the court to enforce it as it is written. If it is ambiguous or doubtful, or susceptible of different constructions or interpretations, then such liberality of construction is to be indulged in as, within the fair interpretation of its language, will effect its apparent object and promote justice."

If we give to the language "cause to be printed such * * * papers as may be required", as used in Section 1639-12 of the General Code, a liberal interpretation consistent with its context, it would appear that if it was necessary for the proper guidance of the officers and employes of the Juvenile Court to publish a pamphlet setting forth rules and regulations or other information to enable such persons to properly perform the duties imposed upon them by the court, the court would have the authority to publish and distribute a publication of such nature.

In the inclosures accompanying your request, you neither furnish the names of the persons to whom the publication was distributed, nor do you set forth the relationship of the persons or agencies to the Juvenile Court. I, therefore, can herein express no opinion as to whether the distribution of the pamphlet in question for any particular purpose is or is not an illegal distribution.

From the nature of the jurisdiction of the Juvenile Court and the fact that the Legislature has imposed upon it the duty of dealing with juvenile offenders, not as criminals but rather as individual cases in which it is seeking to re-adjust the habits and conduct of each offender and to adjust the environment to such a degree that when the offender is released from the jurisdiction of the court he will no longer be susceptible to the influences which caused the offense and will have adjusted himself to society so as to be a respectable citizen without the stigma of a criminal record, I am unable to state, from the facts furnished, that

the publication furnished is or is not a proper publication to be distributed among the officers and employes of the Juvenile Court.

In the pamphlet submitted to me is contained a roster of certain employes of the court, some pages of printed matter which are quite similar to those contained in the type of publication known as "a house organ" such as is published by a mercantile corporation, along with a history of the court, its development and its record. If such were the sole purpose of the publication, it would appear that such publication is beyond the powers of the Juvenile Court to publish such booklet at public expense. However, such booklet contains a number of tables, graphs, tabulated data and other information which might well be considered by a court as being instructions to the officers and employes of the Juvenile Court.

I am, therefore, of the opinion that it is the duty of the Juvenile Court to determine whether or not such publication performs the service for which it is authorized to publish instructions. I must assume in the instant case that such determination has been made by the learned jurist and, if so, I can not state upon the facts presented that the publication and distribution of the pamphlet in question is illegal or that the expenditure made during the years in question by such court were improper.

Respectfully,

THOMAS J. HERBERT

Attorney General