2959.

MINOR—DELINQUENT OR DEPENDENT — WHEN COMMITTED TO PERMANENT CARE AND GUARDIANSHIP OF DEPARTMENT OF PUBLIC WELFARE, SECTION 1639-35 G. C. —JURISDICTION, JUVENILE COURT, TERMINATES AT TIME OF COMMITMENT — DUTY, DEPARTMENT PUBLIC WELFARE TO SUPERVISE AND LOOK AFTER WELFARE OF SUCH CHILD UNTIL IT ATTAINS AGE OF TWENTY-ONE YEARS—SUPERVISION CONTINUES IF CHILD, WITH CONSENT OF DEPARTMENT, ENLISTS IN ARMY OR NAVY OR MARRIES.

SYLLABUS:

When under the provisions of Section 1639-35, *General Code, a delinquent or dependent minor is committed to the permanent care and guardianship of the department of public welfare, the jurisdiction of the juvenile court over such child so committed ceases and terminates at the time of the commitment, and it is the duty of such department to care for, supervise and otherwise look after the welfare of such child until the child attains the age of twenty-one years. And this is true even though such child enlists in the army or navy with the consent of the department, or marries with like consent.*

Columbus, Ohio, November 4, 1940.

Honorable Charles L. Sherwood, Director,
Department of Public Welfare,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Section 1639-35 (117 v. 520) of the Juvenile Court law provides in part:
>
> 'When a child is committed to the boys' or girls' industrial school, or to the Ohio state reformatory, *or to the permanent care and guardianship of the state department of public welfare,* or to an institution or association certified by the state department of public welfare with permission and power to place such child in a

foster home with the probability of adoption, *the jurisdiction of the child so committed shall cease and terminate, at the time of commitment.* All other commitments made by the court shall continue for such period as designated by the court, or until terminated or modified by the court, or until a child attains the age of twenty-one years * * *.'

Section 1352-3 (108 Pt. 2, v. 1158) of the law governing the former Board of State Charities, now the Department of Public Welfare, reads:

'The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. County, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court that court must first consent to such transfer. *The board shall thereupon ipso facto become vested with the sole and exclusive guardianship of such child or children.*

The board shall, by its visitors, seek out suitable, permanent homes in private families for such wards; in each case making in advance careful investigation of the character and fitness of such home for the purpose. Such children may then be placed in such investigated homes *upon trial,* or *upon such contract* as the board may deem to be for the best interests of the child, or proceedings may be had, as provided by law, for the adoption of the child by suitable persons. *The board shall retain the guardianship of a child so placed upon trial or contract during its minority, and may at any time, if it deems it for the best interest of the child, cancel such contract and remove the child from such home.* The board, by its visitors, shall visit at least twice a year all the homes in which children have been placed by it. Children for whom an account of some physical or mental defect it is impracticable to find good, free homes may be so placed by the board upon agreement to pay reasonable board therefor.

The board shall provide needful clothing and personal necessities for such children. When necessary any children so committed or transferred to the board may be maintained by it in a suitable place until a proper home is found. So far as practicable children shall be placed in homes of the same religious belief as that held by their parents. The traveling expenses in connection with the placing of such children in homes, the amount of board, if any, and expenses for clothing and personal necessities and for mental, dental and optical examination and treatment shall be paid out of funds appropriated to the use of the board by the general assembly.'

The question now arises on the authority of the Department of Public Welfare to discharge or relinquish the custody of a minor child committed to the Department of Public Welfare, Division of

Charities, under the provisions of Section 1639-35 G. C., and received by such department under Section 1352-3 G. C., before such child arrives at the age of twenty-one years, other than through adoption procedure.

For example, a child so committed and received into the custody of the Division of Charities, Department of Public Welfare, may have with the consent of the Department enlisted in the Army or the Navy; or, in some instances, may have married, be satisfactorily adjusted and may no longer, in the opinion of the Department, require state care and supervision.

May the Department, in its judgment relinquish the custody of such child, or is it required to retain custody until the child arrives at the age of majority, twenty-one years?"

By the terms of Section 154-57, General Code (as amended by the 93rd General Assembly, 118 v. 82), it is expressly provided that the "department of public welfare shall * * * have all powers and perform all duties vested in or imposed upon the board of state charities. Wherever powers are conferred or duties imposed by law upon the boards and officers mentioned in this section, such powers and duties, excepting as aforesaid, shall be construed as vested in the department of public welfare." In so far as your question is concerned, it is plain that by the provisions of the foregoing section the powers and authority formerly vested in the state board of charities are now lodged in your department.

The question asked by you, therefore, narrows to this:—Since the enactment of the new Juvenile Code (§§ 1639-1, et seq., G. C.; 117 v. 520, eff. 8-19-37), in which Section 1639-37 of the General Code, quoted in your letter, was enacted so as to provide that jurisdiction of the Juvenile Court over a child "committed to the boys' or girls' industrial school, or to the Ohio State Reformatory, or to the *permanent care and guardianship of the state department of public welfare,* or to an institution or association certified by the state department of public welfare with permission and power to place such child in a foster home with the probability of adoption," should terminate at the time of the commitment of such child, may the department of public welfare relinquish the permanent care and custody of such a child committed to it and by its own authority terminate its guardianship before the child becomes of age, that is, before the child attains the age of twenty-one years, which, as provided in Section 8023, General Code, is the age of majority of all persons in this state, male and female?

Prior to the enactment of Section 1639-35, General Code, which, as

stated above, became effective on August 19, 1937, former Sections 1643 and 1672, respectively, provided in part that:

Section 1643:

"When a child under the age of eighteen years comes into the custody of the court (Juvenile 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.* * * *"

(Emphasis and parenthesis mine.)

Section 1672:

"If the court awards a child to the care of an institution, association or a state board in accordance with the provisions of this and other chapters, the judge shall in the award or commitment designate whether it is for temporary or permanent care and custody. If for temporary care, the award or commitment shall not be for more than twelve months, and before the expiration of such period the court shall make other disposition of the matter, or recommit the child in the same manner. During such period of temporary care the institution, association or state board to which such child is committed shall not place it in a permanent foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct. At any time during such temporary custody, the institution or board to whom such child is committed, may, whenever there is an opportunity to place such child in a foster home by adoption, request the court to determine whether such commitment should be modified to include permanent care and custody. *Whenever a child is committed to the permanent care of an institution, association or a state board, it shall ipso facto come under the sole and exclusive guardianship of such institution, association or state board, whereupon the jurisdiction of the court shall cease and determine, except that such institution, association or board, to which such child is permanently committed may petition said court to make other disposition of such child because of physical, mental or moral defects.* * * *" (Emphasis mine.)

The history of Section 1639-35, supra, as set forth in Page's Ohio General Code, Annotated, is that the two sections last above quoted in part (Sections 1643 and 1672) were prior analogous sections, both being expressly repealed in the act in which Section 1639-35 was enacted (117 v. 520). Sec-

tion 1352-3, General Code, quoted in your letter, was not repealed in said act or otherwise, has not in anywise been amended, and stands as last enacted in the act contained in 108 Ohio Laws, Pt. 2, 1158.

You will observe that Section 1639-35, General Code, has to do with the termination of the *jurisdiction of juvenile courts* in juvenile cases, while Section 1352-3, General Code, relates to the guardianship of dependent or neglected minors by the department of public welfare. In this connection your attention is directed to the comment contained in Page's Code, supra, under Section 1639-35, which reads:

> "Under this section, *jurisdiction of the court* terminates in the particular instance specified. As this section now stands, it is unnecessary to make temporary commitments for one year and renew such commitments at the expiration of the year, as formerly."
>
> (Emphasis mine.)

Nothing is contained in Section 1639-35, providing for the termination of the guardianship of the department of public welfare of dependent or neglected children committed to such department by a juvenile court; and the only provision in Section 1352-3 with reference thereto is the mandatory direction that the department of public welfare "shall retain the guardianship of a child so placed upon trial or contract during its minority (i. e., a child placed with a private family with possible adoption in view), and may at any time, if it deem it for the best interest of the child, cancel such contract and remove the child from such home." It would seem to be the plain implication of this language that the department is to retain its guardianship and supervision over any child committed to its care until the child shall have attained its majority, that part of Section 1352-3 just quoted being included so as to dispel any doubt as to the power and duty of the department to retain its guardianship of children placed in homes until adoption, as provided by law. Certainly this is the only conclusion that can be reached consistent with the purpose of the Legislature in enacting the statutes here under consideration, which was to protect dependent or neglected minors and furnish them with the necessities of life and the care and supervision which their parents had failed or refused to provide. That is to say, the department stands in *loco parentis* and to effect the obvious intention of the law makers the department should so stand until the child shall have become of age and presumably able to fend for itself.

In the case of Conti v. Shriner, et al., 30 Abs. 193 (C. of A., 3rd Dist., 1939), it was said as follows at page 196:

> "The purpose of the juvenile law *is protection of the child* and when because of the neglect of a parent it becomes necessary to remove a child for his own protection from the parent's custody, the court is fully justified in permitting the agency to find for him and place him in a permanent foster home wherein he might receive the care and affection that his mother did not give him. See In re Cunningham, 27 Oh Ap 306, and cases therein cited. Lewis v. Reed, 117 Oh St 152; State ex rel Tailford v. Bristline, 96 Oh St 581." (Emphasis mine.)

By Section 7997, General Code, it is provided that:

> "The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him as far as she is able."

And as above pointed out by the terms of Section 8023, General Code, all persons are infants or minors until they become "of the age of twenty-one years and upward." Since the protection of the dependent or neglected child is the primary purpose and object of the legislation here involved, since a child remains a minor until the age of twenty-one is reached, and especially since Section 1639-35, General Code, as amended in 1937, makes provision for the cessation of the jurisdiction of the juvenile court upon the commitment of a child "to the permanent care and guardianship of the state department of public welfare," it would seem necessarily to follow that the department's guardianship was intended by the Legislature to continue as long as the child remains a minor.

As stated at page 247 of Crawford's Statutory Construction:

> "Naturally, the legislative purpose is the reason why the particular enactment was passed by the legislature. Perhaps the reason was to remedy some existing evil, or to correct some defect in existing law, or to create new right or a new remedy. Consequently, in seeking to ascertain the legislative purpose, the court will resort, among other things, to the circumstances existing at the time of the law's enactment, to the necessity for the law and the evil intended to be cured by it, to the intended remedy, to the law prior to the new enactment, and to the consequences of the construction urged."

Indeed there can be no question as to how the sections here involved should be construed because the Legislature itself has provided in Section 1639-59, General Code, that:

"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 discipline 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."

Moreover, Section 10512-11, General Code, formerly Section 8025, is here pertinent. This section is in that part of the new Probate Code relating to "Adoption" and reads in part as follows:

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

(e) By legal guardian of the person of such child, if parents are dead or their residence has been unknown for at least one year, or if the parents have, because of mental, moral or other unfitness, been deprived custody of such child permanently by the juvenile court; but if there is no guardian and such child is not the ward of a state board or of a certified institution or agency, a next friend, appointed by the court shall give consent.

(f) If the parent or parents having the legal custody give the custody of such child for the full term of its minority to a charitable institution outside of this state or to any institution or agency established under the laws of the state to care for children and under the approval of the state department of public welfare, or if such institution or agency has otherwise legally acquired the custody and control of such child, *for the full term of its minority,* the president or secretary of such institution or agency shall file a certified copy of the consent of the board of trustees, or of the proper officers authorized by such institution or agency to act in matters of adoption; *and if such child is a ward of the state department of public welfare or other state board, the secretary of such department shall file a certified copy of the consent given in accordance with its rules.* All such consents to such adoptions shall be acknowledged and witnessed." (Emphasis mine.)

Having made provision for the relinquishment of the guardianship of dependent or neglected minor children committed to its care by adoption proceedings in the probate court, in which proceedings the department is required to file a certified copy of its consent to the adoption, it would seem that, in the absence of some other express provision to the contrary, any permanent commitment to the department by the juvenile court was intended to remain in

full force and effect until the ward becomes of age. And this view of the statutes is consonant with that well settled principle of statutory interpretation and construction to the effect that when a statute prescribes the mode of exercise of the power therein conferred upon a statutory board or officer, the mode specified is likewise the measure of the power granted. See Frisbee Co. v. East Cleveland, 98 O. S. 266, 120 N. E. 309 (1918). As said by Mr. Justice Sanford, in the case of Botany Worsted Mills vs. United States, 278 U. S. 282, 49 S. Ct. 129, 73 L. Ed. 378, 385 (1928):

> " * * * When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode * * * ."

And while the questions here presented were not expressly discussed or considered in the case of Conti v. Shriner, supra, the conclusions herein reached are entirely consistent with the reasoning and holding of the court in that case.

Coming now to the two specific examples mentioned in your request, namely, enlistment in the army or navy of a dependent or neglected child committed to the department by a juvenile court with the consent of the department, or the marriage of such child with like consent, it is my opinion that neither of these actions serves to terminate the guardianship of the department. It is well settled that where an infant lawfully enlists with the consent of his parents or guardian, the government has prior and superior rights to the parents or guardian regardless of the age of the child. As stated in 5 C. J. 301:

> " * * * But for a time the courts were at variance as to the status of a minor who enlisted in the army or navy without the written consent of his parent or guardian, and in the face of the statutes of the United States prohibiting the same, some of the earlier cases held that an enlistment under such circumstances was void. The question was settled by a case in the supreme court, wherein it was distinctly held that the enlistment of a minor in the military service of the United States without the written consent of his parent or guardian is not void, but only voidable."

See also 6 C. J. S. p. 394. et seq.

While it is true that where a minor enlists with the consent of his parents, the parent is deemed to have given such minor the right to the pay and bounties he earns in the service (20 R. C. L. 110), such enlistment does not work a complete emancipation and should such minor be discharged from the service, it would still be the parents' duty to support, educate and other-

wise care for such minor. And since the department stands in *loco parentis,* I do not feel that enlistment in the armed forces with the consent of the department terminates the department's guardianship in cases of the kind mentioned in your letter.

While the courts are not in accord as to the effect of marriage upon the guardianship of the State over minors, the more general and the better rule is that the right of the State is "paramount to any rights which may be acquired by the child through marriage." As stated in the first branch of the headnotes as reported in 19 A. L. R., in the case of In Re Emma Bagley Hook, 95 Vt. 497, 115 Atl. 730, 19 A. L. R. 61 (1921):

> "When the state once assumes control of a delinquent or neglected child, its authority is not ousted by marriage of the child."

Your attention in this connection is directed to the case note following the report of this case in 19 A. L. R. 616, and to 49 A. L. R. 402. And this rule would seem to be the correct one upon principle, for both reason and experience dictate that the assumption of additional burdens by a minor upon his marriage may require additional supervision and care from the person or department to whom he has been committed. And of course it is unnecessary to point out that should such a marriage be dissolved, the need for proper parental care or care and supervision by one who takes the place of the parents might be even more imperative.

The same conclusion in this respect was reached by a former Attorney General in Opinion No. 3160, Opinions, Attorney General, 1934, Vol. II, 1316, the first branch of the syllabus reading:

> "When a child, either boy or girl, is committed to the children's home by a Juvenile Court permanently, and such child at the age of nineteen years, while in the care and custody of the trustees of the children's home, marries, the marriage does not release the child from the guardianship of the trustees of the children's home."

In the opinion proper, Section 10507-20, General Code, providing for the termination of the guardianship of a female ward upon her marriage, was disposed of in this language (p. 1318):

> "By express provision, therefore, the term 'guardianship' as used in section 10507-20 refers only to guardians appointed by the Probate Court and cannot apply to an entirely different part of the Code which relates to guardianships created by statute and by order of court in pursuance of such statutory authority. The

> latter guardianships are a different kind than the ordinary guardianships, as they embrace a broader degree of custody and control over the person of the ward. * * * "

In view of the foregoing, and in specific answer to your question, it is my opinion that:

When under the provisions of Section 1639-35, General Code, a delinquent or dependent minor is committed to the permanent care and guardianship of the department of public welfare, the jurisdiction of the juvenile court over such child so committed ceases and terminates at the time of the commitment, and it is the duty of such department to care for, supervise and otherwise look after the welfare of such child until the child attains the age of twenty-one years. And this is true even though such child enlists in the army or navy with the consent of the department, or marries with like consent.

Respectfully,

THOMAS J. HERBERT,
Attorney General.