

other county in accordance with the provisions of section 24 (G. C. 6563-24) hereof, or in case said joint board shall fail to agree upon any of said matters provided in section 24 (G. C. 6563-24), it shall then be the duty of the secretary of said joint board to notify the governor of that fact, and thereupon it shall be the duty of the governor of the state of Ohio within thirty days to appoint a board of arbitrators of three reputable and experienced civil engineers, neither of whom shall be a resident of any county interested in the proceedings had under this act, nor employed at any time upon any public work done under the direction of the commissioners of any such county."

Section 6563-30 also provided:

"The compensation of each member of the board of arbitrators shall be ten dollars per day and his necessary expenses. Provided, however, such board of arbitrators shall not be engaged in any one proceeding more than twenty days. All other costs, fees and expenses incurred by reason of such arbitration shall be the same as is provided for similar service in proceedings to establish county ditches and shall, together with the expenses and fees of such arbitration be paid as hereinafter provided."

Section 7181, above quoted, specifically provides that when the county surveyor performs services under the provisions of section 6442 to 6822 inclusive, G. C., he shall charge and collect the fees therein provided for, and shall pay all such allowances and fees into the general fund of his county.

In view of the plain provisions of the statute, the conclusion must be that the county surveyor in the case you present should account to his county for fees or allowances in connection with services rendered under the provisions of section 6563-27 G. C.

An examination has been made of the opinions to which you refer, and it is believed that the holding herein is not in conflict with either of said opinions.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1079.

JUVENILE COURT—WHERE MINOR UNDER AGE OF EIGHTEEN COMMITS ACT OF DELINQUENCY—MINOR NOT BROUGHT WITHIN JURISDICTION OF COURT WHILE UNDER EIGHTEEN YEARS OF AGE—COURT WITHOUT JURISDICTION—MINOR ADJUDGED DELINQUENT WHILE UNDER AGE OF EIGHTEEN YEARS—CONFESSES COMMITTING ANOTHER ACT OF DELINQUENCY AFTER EIGHTEEN YEARS OF AGE—WHEN COURT WITHOUT AUTHORITY IN SUCH CASE—WHERE AFFIDAVIT FILED AND PROCESS SERVED BUT CASE CONTINUED UNTIL AFTER MINOR ARRIVES AT AGE OF EIGHTEEN YEARS—JURISDICTION NOT LOST:

1. *Where a minor under the age of 18 years, to wit, of the age of 17 years, commits an act of delinquency, but said minor is not, while under 18 years of age, brought within the juvenile court's jurisdiction by the filing of an affidavit and the service of citation or warrant, said court is thenceforth without jurisdiction to permit the filing of an affidavit against said minor and adjudge him a juvenile delinquent person.*

2. A minor under the age of 18 years, to-wit, of the age of 17 years, commits an act of delinquency and is duly adjudged a juvenile delinquent person and committed, as a ward of the court, to an institution. While in the institution said minor becomes 18 years of age. He then confesses that he committed another act of delinquency while he was still 17 years of age. Held: That the juvenile court has no authority to entertain a new affidavit against said minor and to make a further order as to his custody.

3. A minor of the age of 17 years commits an act of delinquency and in so doing is induced and aided by an adult. Affidavits are filed against both the minor and the adult. Each is apprehended and brought into court, being served with proper process for that purpose. By order of the court said cases are continued for a period of one month. In the meantime said minor arrives at the age of 18 years. Held: That while this question is not free from doubt, the liberal construction required by section 1683 G. C. is to be given the juvenile act suggests the desirability of applying the following as the proper administrative rule, until court decision holds contra: That the juvenile court does not lose its jurisdiction over said minor nor over the adult defendant, but may proceed to hear and determine said cases, even though said minor is not, at the time of said hearing and determination, under the age of 18 years.

4. A minor is adjudged a juvenile delinquent person by the juvenile court and committed to an institution. While confined therein, said minor arrives at the age of 18 years. He then confesses to another act of delinquency committed before his 18th birthday, implicating an adult person who induced and aided him to commit the offense. Held: That the juvenile court is without jurisdiction to entertain a new affidavit charging delinquency against said minor, now 18 years of age, but said court has jurisdiction to entertain an affidavit under section 1654 G. C. against the adult aider and inducer and try said adult defendant thereon.

COLUMBUS, OHIO, March 16, 1920.

HON. GEORGE S. ADDAMS, *Judge of Juvenile Court, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter asking my opinion upon certain questions relative to the jurisdiction of juvenile courts.

(1) Your first question reads as follows:

“A minor under the age of eighteen years, to-wit, of the age of seventeen years, commits an act of delinquency. Before the minor is apprehended he reaches the age of eighteen years. Can the juvenile court then assume jurisdiction, permit the filing of an affidavit against him, hear the case against said minor and pass judgment on him?”

The following provisions of the juvenile act are pertinent here:
Section 1642 G. C.:

“Such courts * * * shall have jurisdiction over and with respect to delinquent, neglected and dependent minors under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children, and their parents, guardians, or any person, persons, corporation or agent of a corporation, responsible for, or guilty of causing, encouraging, aiding, abetting or contributing toward the delinquency, neglect or dependency of such minor, and such courts shall have jurisdiction to hear and determine any charge or prosecution against any person, persons, corporations or their agents, for the commission of any misdemeanor involving the care, protection, education or comfort of any such minor under the age of eighteen years.”

Sec. 1643 G. C. (108 O. L. 260):

"When a child under the age of eighteen years comes into the custody of the court, 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 1644 G. C.:

"DELINQUENT CHILD DEFINED. For the purposes of this chapter, the words, 'Delinquent child' includes any child under eighteen years of age who violates a law of this state. * * *"

Section 1647 G. C.:

"Any person having knowledge of a minor under the age of eighteen years who appears to be either a delinquent, neglected or dependent child, may file with such juvenile court a complaint, sworn to, which may be upon information and belief, and for that purpose such complaint shall be sufficiently definite by using the word delinquent, or dependent, as the facts may be."

Section 1648 G. C.:

"CITATION, WARRANT, CONTEMPT. Upon filing of the complaint, a citation shall issue, requiring such minor to appear, and the parents or guardian or other person, if any, having 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 * * *"

Referring to several of the sections just cited, this department in Opinion No. 154 addressed to Hon. Charles G. White, Batavia, Ohio, under date of March 31, 1919, said:

"Upon the passage of the juvenile act, of which the above quoted sections are a part, the courts of Ohio were quick to declare that delinquency as defined in that act was not in the nature of a crime; that the act itself, so far as the minor child was concerned, was neither a criminal nor penal one, but *reformatory* or *corrective*; and that while the commission of a crime may set the machinery of the juvenile court in motion, the minor proceeded against is not tried by the court as for crimes, but for incorrigibility."

In the opinion referred to it was also said that:

"What section 1642 G. C., above quoted, gives the juvenile court jurisdiction over, is not offenses committed by juveniles, but jurisdiction 'over and with respect to delinquent, neglected and dependent minors.' The order made by the juvenile court under section 1652 G. C. is not a finding of guilt, but rather a determination of status. That is, the minor child is found to be in a certain condition which section 1644 G. C. describes as 'delinquency,' and the effect of the court's order is to make said minor a ward of the court for all necessary purposes of discipline and protection. See section 1643 G. C."

In my opinion it would not be possible to answer your first question affirmatively, without doing violence to both the letter and spirit of the juvenile act. Such an answer could rest upon no other theory than that the juvenile court's jurisdiction related to offenses; that whenever it could be shown the minor was under eighteen years of age at the time the offense was committed, the jurisdiction of the juvenile court could be asserted over the minor, even though the minor's age, at the time such jurisdiction attached, was not under eighteen years. That such a theory is an incorrect one, has already been asserted by the excerpts from the former opinion above referred to.

Furthermore, an affirmative answer to your question would occasion much practical inconvenience in administering the juvenile act. For instance, how could a person truthfully swear to the complaint provided for by section 1647 G. C., to the effect that he had "knowledge of a minor under the age of eighteen years who appears to be a delinquent," when the fact was that the affiant knew that such minor at said time was not under the age of eighteen years, but over that age?

Under one circumstance only, does there appear to be any authority in the juvenile court to exercise jurisdiction over a minor who is not under the age of eighteen years. This circumstance is set forth in section 1643 G. C., above quoted, and relates to the *continuing* jurisdiction of the court. As the section points out, the jurisdiction originally attaches in respect of a "child under the age of eighteen years" who has come into the custody of the court under the provisions of the juvenile act. The power of the court "over such child" then continues until he or she attains the age of twenty-one years.

In the case with which we are now dealing, it appears that no step has been taken by the juvenile court to exert its jurisdiction over the child until said child is no longer under the age of eighteen years. It must therefore be concluded that in such case the juvenile court is without jurisdiction to entertain an affidavit against the child, and can not adjudicate the question of such child's delinquency. That is to say, your first question is answered in the negative.

(2) Your second question reads thus:

"A minor under the age of eighteen years, to wit, of the age of seventeen years, commits an act of delinquency. This minor is brought before the court and is adjudged a delinquent, made a ward of the court, and committed to an institution. While in the institution said minor becomes eighteen years of age and he then confesses to committing an act of delinquency made by him while still seventeen years of age. Can this court entertain a new affidavit against him and make a further order as to said minor? (Having in mind section 1643 of the General Code of Ohio.)"

There are several things to be considered in respect of this question; first, the significance of the fact that the minor against whom any new affidavit is filed is, at the time of such filing, an inmate of an institution. Section 1642 G. C., it will be noticed, says that the courts therein named shall have jurisdiction—

"over and with respect to * * * minors * * * not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children * * *"

So that if your query, in using the word "institution," means an institution of the kind mentioned by the foregoing provision of section 1642 G. C., your question would require a negative answer for that reason.

It may be claimed, however, and we suppose this is the real point of the question, that while as a general rule an affidavit charging delinquency under the juvenile act

can not be filed against any but minors under the age of eighteen years, yet there is this exception to the rule: That where such minor has once been declared a delinquent and has been placed under the continuing jurisdiction of the juvenile court, that jurisdiction is broad enough to allow the court to entertain new affidavits against the minor at any time prior to the time said minor becomes twenty-one years of age. That your question is suggested by such a theory appears from your reference to section 1643 G. C., which, as we have seen, is the section authorizing the continuing jurisdiction of the juvenile court.

In my opinion, section 1643 G. C. is not open to the construction just suggested. The purpose of that section was to cause the minor to retain, past the ordinary juvenile age, the status which had been theretofore given him "for necessary purposes of discipline and protection." As said above, the juvenile proceeding is not a criminal one. There is no intention to punish the minor, but only to provide "proper guardianship" for the child. Section 1683 G. C.

Another thing to be considered in respect of this question is the anomaly which would be occasioned by a proceeding to declare a delinquent, one who already possesses that status by an adjudication of the juvenile court.

(3) Your third question is this:

"A minor of the age of seventeen years commits an act of delinquency and he is 'induced and aided' by an adult. Affidavits are filed and the minor is apprehended and the defendant is arrested. The defendant asks for a continuance of his case, to which he is entitled, and said case is continued, say, for one month. In the meantime the minor arrives at the age of eighteen years. Does the court lose its jurisdiction over the minor and the defendant, or either of them, or can it proceed to hear the case when the continuance asked for expires?"

There are really two parts to this question: (a) As to the jurisdiction of the court over the minor; and (b) As to the jurisdiction of the court over the inducer and aider, who is an adult. It will be found convenient to consider these two situations separately.

(a) As to the jurisdiction of the court over the minor:

"When a child under the age of eighteen years comes into the custody of the court," says section 1643 G. C., "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. * * *"

From your statement of facts it would seem that the minor referred to has, while under the age of eighteen years, come into the custody of the court, for it is stated that while the minor is yet seventeen years of age an affidavit is filed and said minor *apprehended*, that is, brought within the jurisdiction of the court by one of the ways provided by section 1648 G. C., to-wit, by service of citation or by service of warrant. That jurisdiction acquired while the minor was under the age of eighteen years would, by reason of the provisions of section 1643 G. C., continue for all necessary purposes of discipline and protection until said minor attained the age of twenty-one years; unless, of course, the court did not make any adjudication of delinquency. In the latter case, the court's jurisdiction would terminate at the moment the court found that said minor was not a delinquent child.

The conclusion is therefore reached that where an affidavit charging delinquency is filed in juvenile court against a minor, and service of a citation or warrant is duly had on said minor while he or she is yet under the age of eighteen years, the fact that during the period of a continuance ordered by the court, and before the court makes an adjudication of delinquency, said minor becomes eighteen years of age and past, does not take away the court's jurisdiction to proceed against said minor as a juvenile delinquent person.

It is realized that the question just considered is not free from doubt. However

in the absence of any court decision contra, we feel that the rule just announced is a proper administrative rule to be followed, the same being consistent with the liberal construction which section 1683 G. C. requires to be given the juvenile act.

(b) It now remains for us to consider whether, under the facts of your third question, the juvenile court loses its jurisdiction over the adult person charged with inducing and aiding the delinquency of said minor.

Section 1654 G. C., upon whose provisions the affidavit against the aider and inducer is based, says:

Whoever abuses a child or aids, abets, induces, causes, encourages or contributes toward the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, or acts in a way tending to cause delinquency in such minor, shall be fined not less than ten dollars, nor more than one thousand dollars or imprisoned not less than ten days nor more than one year, or both. Each day of such contribution to such dependency, neglect or delinquency, shall be deemed a separate offense. If in his judgment it is for the best interest of a delinquent minor, under the age of eighteen years, the judge may impose a fine upon such delinquent not exceeding ten dollars, and he may order such person to stand committed until fine and costs are paid."

It will be observed that said section defines a crime, to wit, a misdemeanor. State vs. Rose, 89 O. S. 383. So that, as regards the aider and inducer, the proceedings of the juvenile court are not reformatory or corrective, but criminal. State vs. Dunn, 53 Ore. 304. The problem is to be solved, therefore, by reference to the rules of criminal procedure.

If the defendant were being tried upon an indictment charging rape of a female person under the age of sixteen years, with her consent (Sec. 12414 G. C.), the inquiry upon the subject of the female person's age would be, not how old she was at the time of the trial, but how old she was at the time of the commission of the offense charged. The state would be required to allege in the indictment and prove at the trial that at the time the offense was committed the female person was under the age of sixteen years. It would be no offense for the defendant to show that at the time of the trial such female was not under sixteen years of age. In other words, under the law of crimes, where age is one of the ingredients of an offense, it is age as of the time when that offense was committed.

When, therefore, section 1654 G. C. speaks of the abusing, or of aiding or contributing toward delinquency of a minor *under the age of eighteen years*, what is meant is the minor's age at the time of the alleged abuse or the contribution toward delinquency.

In Willison vs. State, 3 O. A. R. 244, decided June 9, 1914, the syllabus says:

"In a prosecution for contributing to the delinquency of a minor, the affidavit, in order to charge a crime, must allege that the minor is under eighteen years of age and is a delinquent within the meaning of the statute, and that the defendant is guilty of contributing to such delinquency."

At p. 245 of the opinion the court says:

"Section 1644, General Code, as found in 103 Ohio Laws, at page 869, defines the words 'delinquent child' and specifies the acts that constitute any minor under the age of eightetn years a delinquent. There are a number of specifications in this section, which, when applied to such minor, constitute him a delinquent within the meaning of the statute.

The affidavit, in order to set out a crime, should not only charge that the party against whom the affidavit is filed was violating some one of the criminal statutes of the state in contributing to such delinquency, but it should charge also that such child was delinquent and specify the particulars in which such delinquency exists."

In the light of the above quotations, it appears the statement in said syllabus, that the minor must be a delinquent, does not mean the minor must have been *adjudged* a delinquent by the juvenile court. If that were true, all prosecutions against persons for contributing to the delinquency of a minor would have to be held in abeyance until the juvenile court had, in a separate proceeding, first determined said minor to be a delinquent. Such a construction would greatly impair the workability of the juvenile law and is one which has never been judicially sanctioned, so far as I am informed.

You are therefore advised that where an affidavit is filed in juvenile court, charging an adult person with inducing and aiding the delinquency of a minor under the age of eighteen years, contrary to section 1654 G. C., and said minor, before said case is tried and while the same is pending under an order of continuance granted by the court, arrives at the age of eighteen years, said court does not, by reason of that fact, lose its jurisdiction over the adult defendant.

(4) Your fourth question reads thus:

"A minor having been made a ward of this court, and while confined in an institution arrives at the age of eighteen years. He then confesses to another act of delinquency committed before his eighteenth birthday, implicating an adult person who 'induced and aided' him to commit the offense. Can this court entertain a new affidavit against said ward, now eighteen years of age, and cause the filing of an affidavit against the adult who aided and induced' and try said adult for contributing to said minor's delinquency?"

Inasmuch as you say that the minor confesses to "another" act of delinquency it is assumed that in the situation which you have in mind the minor has been adjudged a delinquent and committed as such. The situation then is, in so far as the minor is concerned, the same as the situation put by your second question. I shall not repeat what was said there, but will simply advise that under the facts of your fourth question the juvenile court is without authority to entertain a new affidavit against said minor, now eighteen years of age.

The other element of your question has to do with an adult person who induces and aids a minor to commit an offense; that is, to become a delinquent, at a time when said minor is under the age of eighteen years, but whose contribution toward such delinquency is not discovered until said minor is no longer under eighteen years of age. This same situation was passed upon in connection with your third question, with this difference: Under your third question the fact was that the minor was *under* the age of eighteen years at the time the affidavit charging contribution to delinquency was filed against the adult; whereas, we are now dealing with a case where the minor is assumed to be *over* the age of eighteen years at the time of the filing of the affidavit against the adult.

This difference in fact is not material here, however. In prosecutions for contributing to a minor's delinquency, the important inquiry is not, how old was the minor when the affidavit was filed, but how old was the minor at the time when it is charged he or she was delinquent.

In other words, it is considered that an answer has already been given herein (namely in connection with your third question) to that part of your fourth question which deals with the adult "aider and inducer."

Specifically answering your fourth question, you are advised that in the case stated the juvenile court has authority to entertain an affidavit against the adult who "aided and induced" said minor to become delinquent and may try said adult for contributing to said minor's delinquency.

Respectfully,
 JOHN G. PRICE,
Attorney General.

1080.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN CLERMONT COUNTY, OHIO.

COLUMBUS, OHIO, March 16, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1081.

DISAPPROVAL, REFUNDING BONDS, TRUMBULL COUNTY, OHIO, IN AMOUNT OF \$64,000.

COLUMBUS, OHIO, March 16, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

Re refunding bonds of Trumbull county, in the amount of \$64,000, being 12 bonds of \$1500 each and 46 bonds of \$1000 each.

GENTLEMEN:—I have examined the transcript of the proceedings of the county commissioners and other officers of Trumbull county relative to the above bond issue and decline to approve of the validity of said bonds for the following reasons:

House Bill No. 460, passed May 6, 1919, 108 O. L., 380, under authority of which the bonds in question are issued, confers upon county commissioners the authority to refund bonds heretofore issued by road districts in the following language:

"* * * Whenever the same may become necessary the county commissioners may refund such bonds in the manner provided by law for refund-other bonds of the county."

Sections 5656, 5658 and 5659 G. C. contain the grant of power and prescribe the necessary proceedings for refunding "other county bonds." Sections 5656 and 5658 are as follows:

"Sec. 5656. The trustees of a township, the board of education of a school district and the commissioners of a county, for the purpose of extending the time of payment of any indebtedness, which from its limits of taxation such township, district or county is unable to pay at maturity, may borrow money or issue the bonds thereof, so as to change, but not increase the in-