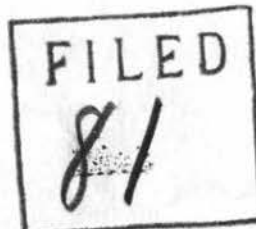


JUVENILES:) Missouri Board of Training Schools shall accept
MISSOURI BOARD OF) custody of a boy over the age of 17 who has been
TRAINING SCHOOLS:) committed to the custody of the Board of Training
Schools before his 17th birthday.

June 14, 1949



Hon. W. E. Sears, Director
Board of Training Schools
Jefferson City, Missouri

Dear Mr. Sears:

Your request for an opinion of this office relative to the commitments of juveniles reads as follows:

"Will you please forward an opinion on the following question.

"Can a boy who has been found delinquent by the Juvenile Court and sentenced, but placed on probation by the Juvenile Court, while he was under 17 years of age, be received by the training school on a commitment after he has passed his 17th birthday?"

Paragraph 1 of Section 899¹/₄, of Senate Bill 289 approved March 4, 1948; Laws of Missouri 1947, Volume II, at page 320, l. c. 321 provides as follows:

"Any boy over the age of 12 years and under the age of 17 years and any girl over the age of 12 years and under the age of 21 years who has been convicted of a crime or who is found by the juvenile or circuit court to be in need of training school education and discipline may be committed to the state board of training schools. Except where a child who is convicted of a crime and sentenced for a period of time which will not expire until after his 21st birthday, all commitments to the Board shall be made for an indeterminate period of time."

The pertinent part of the above paragraph is, "Any boy over the age of 12 years and under the age of 17 years * * * * * who has been convicted of a crime or who is found by the juvenile or circuit court to be in need of training school education and

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discipline may be committed to the state board of training schools."

Notice will be taken that this section does not make reference to delinquent boys -- as such -- and the nearest reference to this class of boys is, "who is found by the juvenile or circuit court to be in need of training school education and discipline."

Section 9673, R.S.A. Mo. 1939 applies to 1st and 2nd class counties and in part reads as follows:

"This article shall apply to children under the age of seventeen (17) years, not now or hereafter inmates of any institution or any institution incorporated under the laws of the state for the care and correction of delinquent children: Provided, that when jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of this article, until the child shall have attained its majority; * * * * *

Section 9698, as amended, Laws of 1945, page 627, l. c. 628, House Bill No. 679, Sec. 1, Mo. R.S.A. Vol. 20, Cum. Pocket Part, page 143, is pertinent to this issue, and, in part, reads as follows:

"This article shall apply to children under the age of seventeen years, in counties of the third and fourth classes, who are not now or hereafter inmates of any state institution or any institution incorporated under the laws of the state for the care and correction of delinquent children. When jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of this article, until the child shall have attained the age of 21 years. * * * * *

It will be noted by this section that when jurisdiction by the juvenile court has once been acquired, such jurisdiction shall continue until the child reaches the age of twenty-one years.

In the case of State ex rel. Boyd v. Rutledge, Circuit Judge, 13 S. W. (2d) 1061, the court said, at l. c. 1065, and 1066:

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"Now there is no provision anywhere for the trial in a court of general jurisdiction of a boy under 17 charged with crime, and a transfer of the cause from that court to a juvenile court in the event of his conviction, in order that he may be sentenced by the latter court. Hence the inference necessarily follows that such a boy can be tried only in the juvenile court. We conclude, therefore, that the juvenile court has exclusive jurisdiction in all cases in which persons under 17 years of age are charged with either delinquency or the commission of crime. The giving to the juvenile court exclusive jurisdiction, even in cases in which a boy under 17 is proceeded against on a criminal charge, is in consonance with the general purpose of the act. The juvenile court has a broader latitude than a court of exclusive criminal jurisdiction in the imposition of punishment. * * * * *

* * * * *

"When a delinquent child is brought before a juvenile court charged with the violation of a criminal statute, the judge of that court must determine in the first instance whether such child shall be proceeded against as a delinquent, or prosecuted under the criminal law. If the child is then under 17 years of age, the further proceeding, whichever it may be, must be had in his court; if the child is then 17 years of age or over, the judge may, if he determines that the child should be prosecuted under the general law, either direct the trial to proceed in his own court, or order the cause transferred to a court having general criminal jurisdiction. When a child who has passed his seventeenth birthday is brought before a court of general criminal jurisdiction, charged with having committed a criminal offense while under 17 years of age, that court may determine whether he should be dealt with as a delinquent, or prosecuted under the general law, and, if it decides that he should be proceeded against as a delinquent, order the cause transferred to the juvenile court. But a court of general criminal jurisdiction is wholly without jurisdiction in cases in which a child under 17 years of age is charged with the violation of criminal law; without jurisdiction

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to even determine which course should be pursued with respect to such child."

According to Section 9698, supra, and the holding of the court in the case of State ex rel. Boyd v. Rutledge, supra, since the juvenile court acquired jurisdiction over the boy in question, and proceeded against him and rendered judgment in the juvenile court, he being sixteen years of age at the time of the charge and of the sentence, such judgment is final and the court would be without authority to resentence the defendant in a court of general jurisdiction to a term in the Intermediate Reformatory at Alca.

Section 4106, R. S. Mo. 1939 provides and reads as follows:

"Where any convict shall be sentenced to imprisonment in the penitentiary, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by general and usual deputy, cause such convict to be transported to the penitentiary and delivered to the keeper thereof."

Thus it is the duty of the clerks to forthwith deliver a certified copy of the sentence to the sheriff.

In the case of Williford v. Stewart, 198 S. W. (2d) 12, 1. c. 14 and 15 the Supreme Court of the State of Missouri said:

"With the case standing as it does the question is, shall the judgment shown in the commitment prevail over the judgment and minutes certified to us directly by the circuit clerk. We think the answer clearly is that we must accept the latter as authentic. As a matter of fact, the only commitment required by the statute is a certified copy of the judgment and sentence. * * * * *
And Sec. 9057 provides that when the convict is delivered to the Commission of the Department of Penal Institutions, the officer having him in charge shall deliver to the Commission the certified copy of the sentence previously received by such officer from the clerk of the court. This, of itself, is enough to show the judgment and sentence are controlling. A commitment

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is in the nature of a warrant, and its issuance
by the clerk is a ministerial act. * * * * *
* * * * * * * * * * * * * * * *"

Section 9688 R. S. Mo. 1939 in part reads as follows:

"In the case of a delinquent child, the court
may suspend the sentence or execution thereof
from time to time, and may in the meantime
commit the child to the care and control of
a probation officer duly appointed by the
court, and may allow such child to remain
in its home subject to the visitation and
control of the probation officer, such child
to report to the probation officer as often
as may be required, and to be subject to be
returned to the court for further proceedings
whenever such action may appear to the court
to be necessary; * * * * * * * * * * * * * * * *"

From the above citations the writer is of the opinion that when
the juvenile court once acquires jurisdiction over a boy, that,
jurisdiction continues until he attains his majority and when
sentenced by the juvenile court to the Missouri Training School
while within the age limits prescribed in Section 8994, Laws of
1917, such boy can and should be accepted by the Board upon
delivery to them although the boy has passed his 17th birthday
at the time of delivery since the sentence and judgment of
the court is the commitment and carrying out of the statutory
requirement by the clerks is a ministerial act.

CONCLUSION

Therefore, it is the opinion of this Department that a boy sentenced
for delinquency by the juvenile court to the custody of the Missouri
Board of Training Schools, while under the age of 17 can legally be
accepted by the Board of Training Schools, after he attains the age
of 17 and before he becomes twenty-one years of age.

To say otherwise would be to say that a boy placed on probation by
the juvenile court would be nothing more or less than a dismissal
of the case on the boy's 17th birthday.

Respectfully submitted

APPROVED:

GORDON P. WEIR
Assistant Attorney General

J. E. TAYLOR
ATTORNEY GENERAL