

JUVENILES: Juvenile court cannot commit boy over 17 to  
JUVENILE COURTS: State Training School even if child is under  
TRAINING SCHOOLS: jurisdiction of court. Juvenile court may  
BOARD OF TRAINING SCHOOLS: exercise jurisdiction over child for viola-  
MINORS: tion of law when child has been paroled by  
CHILDREN: State Board of Training Schools. After  
PARENTAL RIGHTS: filing a petition for termination of parental  
SERVICE: rights, parents must be notified of right to  
counsel, and counsel appointed if parents  
cannot employ same. Parents in federal prisons outside Missouri sum-  
moned by mail or personal service as provided in Sec. 506.160.

OPINION NO. 270

November 13, 1962

Honorable Lon J. Levvis  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

270

Dear Mr. Levvis:

This is in answer to your letter of recent date requesting an opinion from this office in regard to three specific factual situations, the first of which, with question in reference thereto, reads as follows:

"A boy 16 years of age committed the offense of burglary. He was made a ward of the Audrain County Juvenile Court and placed under the supervision of the juvenile officer. That status continued until a short time after the boy's seventeenth birthday, when he participated in another burglary. Does the Juvenile Court of said county have authority to commit this minor to the State Board of Training Schools?"

In answering your foregoing inquiry, your attention is directed to Section 211.191 of Chapter 211, RSMo 1959, which pertains to juvenile courts. Said section states as follows:

"Nothing in sections 211.011 to 211.431 shall be construed to repeal any part of the law relating to the state training school for girls or the state training school for boys; and in all commitments to either of these institutions the law in reference to them shall govern."

Honorable Lon J. Levvis

Chapter 219, RSMo 1959, deals with the law relating to the Missouri State Training School for Boys and Section 219.160 pertains to the statutory provisions thereof governing the commitments thereto. Said section reads as follows:

"Any boy over the age of twelve years and under the age of seventeen years and any girl over the age of twelve years and under the age of twenty-one 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 twenty-first birthday, all commitments to the board shall be made for an indeterminate period of time."

As the quoted section restricts the commitment of any boy to the State Board of Training Schools to boys over the age of twelve and under the age of seventeen years, it is our view that, as the minor in question is seventeen years old, he cannot now be committed to the State Board of Training Schools by the juvenile court under our present laws.

Your second factual situation and inquiry in reference thereto reads as follows:

"A boy 14 years of age was adjudged in the Juvenile Court of Audrain County to be a delinquent minor and was committed to the State Board of Training Schools, which assigned him to the Boonville institution. About one year later he was released, on parole, from that institution. While he was 16 years of age and still on said parole he was arrested on charges of having possession of alcoholic beverages,

Honorable Lon J. Levvis

driving a motor vehicle without having an operator's license, and leaving the place of an accident, the latter being a felony. May said Juvenile Court, while said minor is still on said parole from Boonville, entertain a petition of the Juvenile Officer charging said minor with said recent offenses, and commit him again to said Board or order him tried under general law, or does exclusive jurisdiction of said minor remain with the Board of Training Schools?"

Note in this regard Section 211.021, which states, in part, as follows:

"As used in sections 211.011 to 211.431, unless the context clearly requires otherwise:

\* \* \* \*

"(2) 'Child' means a person under seventeen years of age; \* \* \*."

And, further, note Section 211.041, which states as follows:

"When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of sections 211.011 to 211.431 in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of sections 211.011 to 211.431 until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools."

In an opinion of this office under date of April 20, 1959, issued to W. E. Sears, Director of Training Schools, we concluded, from a reading of Chapters 211 and 219, RSMo,

Honorable Lon J. Levvis

and specifically Sections 211.041, 211.191, 211.251 and 219.220, that the juvenile court loses jurisdiction of a child when such child is committed to and received by the State Board of Training Schools. (A copy of said opinion is enclosed herewith.)

However, the loss of jurisdiction which results from committing the child to the State Board of Training Schools has reference only to the proceedings in which the jurisdiction was initially obtained by the committing juvenile court. The obvious purpose of Section 211.041 was to prevent the juvenile court from retaining jurisdiction over the person of the child in the original proceedings after the child has been committed to and received by the State Board of Training Schools. It does not purport to and may not reasonably be construed to grant to the State Board of Training Schools exclusive jurisdiction over the person of the child for all purposes, nor to prevent the juvenile court from acquiring (as distinguished from retaining) jurisdiction over the person of the child in other proceedings coming within the applicable provisions of Sections 211.021 and 211.031, as the result of an alleged violation of law subsequent to the original commitment.

Under the facts as submitted, therefore, assuming that the boy in question is within Audrain County pursuant to the requirements of Section 211.031, supra, it is our view that the fact that the child is on parole from the State Board of Training Schools does not preclude the juvenile court of Audrain County from exercising jurisdiction over the child by reason of his alleged subsequent acts.

Your concluding factual situation pertains to the termination of parental rights, the procedure and grounds for which are contained in Sections 211.440 to 211.511, RSMo 1959, inclusive. Said facts are as follows:

"Both of the parents of three small children in Audrain County have been convicted of felonies and are confined in federal prisons outside Missouri. The children have been made wards of the State of Missouri, and the Juvenile

Honorable Lon J. Levvis

Officer wants to ask the Juvenile Court of said county to terminate the parental rights of said parents so that said children may be offered for adoption."

Only two questions are asked in reference to the above, the first of which is: "What, if any, provision is there in law for providing said parents with legal counsel in an action to terminate their parental rights?"

Section 211.471 states, in part:

"As soon as practicable after the filing of a petition and prior to the hearing, the parent, guardian, or custodian shall be notified of their right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court."

It is our view that this section plainly makes it mandatory that the parents in this case should be notified of their right to have counsel as soon as practicable after the filing of the petition for termination and prior to the hearing, and that if they request counsel and are financially unable to employ counsel, counsel must be appointed by the court.

Your concluding question is: "How may said parents be given lawful notice of such proceedings?" Section 211.461 states as follows:

"1. The termination of parental rights shall be made only after a hearing before the juvenile court. A summons shall be issued by the judge or the clerk of the court requiring the person, agency or organization having custody or control of the child to appear with the child at the place and time stated in the summons. Persons who shall be summoned and receive a copy of the petition shall also include the parents of the child, \* \* \* and the state division of welfare, agency or organization or person standing in loco parentis having an interest in the welfare of the child. \* \* \*

Honorable Lon J. Levvis

"2. Service of summons shall be made as in other civil cases in the manner prescribed in section 506.150, RSMo, provided however, if service cannot be made as prescribed in section 506.150, RSMo, then the service shall be made by mail or publication as provided in section 506.160, RSMo.

"3. The parent or parents may waive appearance or service of summons in writing before the court."

After considering this section and those sections referred to therein, it is our view that, absent a waiver as provided in subdivision 3, the parents must be summoned and must be served with a copy of the petition for termination of parental rights and that this service of summons and petition, along with the notice of the parents' right to have counsel, as considered previously, should be made by mail or by personal service out of the state as provided for in Section 506.160, RSMo 1959, as under the facts presented herein the parents are outside the confines of the State of Missouri but their address is known.

#### Conclusion

(1) The juvenile court has no authority to commit to the State Board of Training Schools a boy who violates the law after attaining the age of 17 years, even though the boy was then under the jurisdiction of the juvenile court.

(2) The juvenile court is not precluded from exercising jurisdiction over the person of a child by reason of an alleged violation of law subsequent to his commitment to and parole from the State Board of Training Schools.

(3) As soon as practicable after the filing of a petition for termination of parental rights and prior to the hearing, the parents must be notified of their right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel must be appointed by the court.

Honorable Lon J. Levvis

(4) Parents confined in federal prisons outside the State of Missouri should be summoned and served with a copy of the petition for termination of their parental rights by mail or by personal service outside the state as provided for in Section 506.160, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul A. Slicer, Jr.

Yours very truly,

---

THOMAS F. EAGLETON  
Attorney General

PAS:lt;ml