MISSOURI TRAINING SCHOOL FOR BOYS: Maximum age which boys can be committed to the Missouri Training School for Boys at Boonville, and the use of certified copies of birth certificates as proof of age.

January 2, 1946

FILED
65

Honorable LeRoy Munyon
Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Mr. Munyon:

Replying to your request for an opinion from this office on the questions contained in your letter, which reads as follows:

> "Will you please advise me as the superintendent of the Missouri Training School for Boys if there is a maximum age over which a boy may not be sentenced to the Training School? Also if the superintendent of the training school must receive a boy who was over 17 years of age at the time of commitment.
>
> "Will you also please advise me regarding birth certificates furnished by the Bureau of Vital Statistics and their legal evidence of a boy's age? For illustration: we recently received a boy at the Training School who was found by the court to be under 17 years of age but the Bureau of Vital Statistics furnished us with a certificate saying the boy was over 17 years of age. We assume that the finding of the court is conclusive as far as the school is concerned. Are we correct in this assumption?"

Section 8993, R.S. Mo. 1939, reads as follows:

> "The institution heretofore known as the 'Missouri Reformatory', located

> at Boonville, Missouri, shall continue to be maintained and shall hereafter be designated as the 'Missouri Training School for Boys'; and wherever the words 'Missouri Reformatory' or the words 'Missouri Reform School for Boys', or 'Missouri Training School for Boys' occur in the statutes they shall be held to mean and refer to the 'Missouri Training School for Boys' located at Boonville, Missouri."

Section 8998, R.S. Mo. 1939, referring to persons under seventeen years of age who may be convicted of a crime, in part, reads as follows:

> "Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri Training School for Boys; and any boy under the age of seventeen years convicted of any other felony, either upon plea of guilty or upon trial, may be committed to the Missouri Training School for Boys. Any boy under the age of seventeen years convicted of a misdemeanor in any court of record, either upon the plea of guilty or upon trial, may, in the discretion of the court, be committed to the Missouri Training School for Boys. * * * ".

Section 9673, R.S. Mo. 1939, applies to delinquent children under the age of seventeen years in counties having a population of 50,000 or over, and is, in part, as follows:

> "This article shall apply to children under the age of seventeen (17) years,

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: * * * * * * * For the purpose of this article, the words 'neglected child' shall mean any child under the age of seventeen (17) years, who is destitute or homeless, or abandoned, or dependent upon the public for support, or who habitually begs or receives alms, is found living in any house of ill-fame, or with any vicious or disreputable person, or who is suffering from the cruelty or depravity of its parents, or other person in whose care it may be; and any child who while under the age of ten (10) years is found peddling or selling any articles or singing or playing any musical instrument for gain upon the street or giving any public entertainments or accompanies or is used in any aid of any person so doing. The words 'delinquent child' shall include any child under the age of seventeen (17) years who violates any law of this state, or any city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime, or who knowingly visits or enters a house of illrepute; or who knowingly patronizes or visits any policy shop or place where any gaming device is or shall be operated; or who patronizes or visits any saloon or dramhouse where intoxicating liquors are sold; or who patronize or visits any public pool room or bucket shop; or who habitually wanders about the street in the nighttime without being on lawful business or occupation; or who habitually wanders about the streets or roads or public places during school hours without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks, or jumps or who habitually hooks on to any train, or enters any

> car or engine without lawful authority, or who is either habitually truant from any day school, or who, while in attendance at any school is incorrigible, vicious or immoral; or who habitually uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct in any public place or about any schoolhouse; or who habitually and willfully, and without the consent of its parents, guardian, or other person having legal custody and control of such child, absents itself from home and remains away at night, or loiters and sleeps in alleys, cellars, wagons, buildings, lots or other exposed places. Any child committing any of the acts herein mentioned shall be deemed a juvenile delinquent person, and shall be proceeded against as such in the manner hereinafter provided. * * * * * *."
> (Emphasis ours.)

The Legislature in 1917 enacted a law applicable to all delinquent minors, which was approved April 10, 1917. The Legislature in 1919, by amendment, approved May 30, 1919, changed the age from eighteen years as provided in the section enacted in 1917, to that of seventeen years, which is now the age limit, and that section as amended is the same as Section 9696, R. S. Mo. 1939, which applies to all delinquent minors, and reads as follows:

> "Whenever in the state of Missouri any minor of the age of seventeen years or over shall commit any of the acts constituting a delinquent child as defined in the statutes of this state, applicable to children under seventeen years, such minor may be caused to be brought by his or her parents or lawful guardian or by the probation officer or by any person interested in said minor, before a court of record having jurisdiction over misdemeanors, and tried in the same manner as a person charged with the commission of a misdemeanor. Upon the finding of delinquency, the court may proceed to make such order in the case as may seem to be for the best interests of said minor, either by commitment to any public institution or to any private institution willing to receive

> such minor, or to the care and custody of any individual willing to care for said minor or said minor may be left in the care of his or her parents or guardian, subject to the supervision of the court under suspended sentence; or the court may proceed to make any other lawful disposition of the case."

Section 9698, R.S. Mo. 1939, applies to delinquent or neglected children in counties having a population of less than 50,000 inhabitants, and reads as follows:

> "This article shall apply to children under the age of seventeen years, in counties of less than 50,000 population, 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. For the purpose of this article, the words 'neglected child' shall mean any child under the age of seventeen years, who is homeless or abandoned, or who habitually begs or receives alms, is found living in any house of illfame, or with any vicious or disreputable person, or who is suffering from depravity of its parents, or other person in whose care it may be. The words 'delinquent child' shall include any child under the age of seventeen years who violates any law of this state, or any city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime, or who knowingly visits or enters a house of ill-repute or any place where any gaming device is operated; or any saloon or dramshop where intoxicating liquors are sold; or who is

> either habitually truant from any day school, or who, while in attendance at any school, is incorrigible, vicious or immoral. Any disposition of any delinquent child under this article, or any evidence given in such cases shall not in any civil, criminal or other cause or proceeding whatever in any court be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases under this article. The word 'child' or 'children' may mean one or more children, and the word 'parent' or 'parents' may mean one or both parents when consistent with the intent of this article. The word 'association' shall include any corporation which includes in its purpose the care or discipline of children coming within the meaning of this article. The words 'probation officer,' in all sections of this article, defining his powers and duties shall include his deputies."
>
> (Emphasis ours.)

Sections 9688 and 9704, R. S. Mo. 1939, provide that if a child is found to be delinquent, such child may be committed to an institution by the judge of the juvenile court.

In the case of State ex rel. Wells vs. Walker, Circuit Judge, 34 S. W. (2d) 124, l. c. 129, the Court said:

> "In order to set at rest any dispute as to the jurisdiction of the circuit court to entertain a proceeding under the general law where a child is charged while under seventeen years of age with the commission of a crime, the other act of 1927 (page 129) covers any case that might be in doubt, but providing that <u>any</u> petition or application made to <u>any</u> court or judge having <u>general jurisdiction of criminal cases may deny</u> any motion, petition, or application to transfer the case to a court having jurisdiction of delinquent children.

> An earlier act could not nullify that provision. All these provisions, taken together, contemplate that an information like that under consideration here must first be <u>filed</u> in the circuit court, and, if the person affected desires to have the case conducted under the provisions of the juvenile law, he must file some motion or petition to transfer the case from the circuit court to the juvenile court, so called for 'convenience,' which would merely mean that the defendant must ask the court to conduct the case as provided for a juvenile delinquent and not prosecute him under the general law. The record shows no motion or suggestion to the trial court that the proceedings be so transferred. The court could not then be without jurisdiction to proceed in the case when no proper method has been attempted by relator to have the proceeding transferred. He has no right to have the proceeding dismissed because he is properly and lawfully in court upon the charge under the authority of the provisions quoted. It is the circuit judge who sits and tries the case whether it is tried under the general law or under the juvenile law. As judge of the circuit court, he must determine whether the relator may be prosecuted under the general law. The distinctions which are made are not in the different courts which may have jurisdiction of one prosecuted as a delinquent or as a criminal but in the application of a <u>law in the same court</u>. We could not make the preliminary rule absolute and thus compel the judge to dismiss the case. We could only order him to stop the proceeding under the criminal law."

In the same case the Court further said at l.c. 133:

> "It is clear, therefore, that the respondent judge of the circuit court of Howard

> county has jurisdiction to proceed with this case in the manner contemplated by his order, or jurisdiction to conduct the case against relator as a delinquent child, and whether he may conduct it one way or the other is to be determined by him.
>
> "The provisional rule is therefore discharged."

With Reference to Copies of Birth Certificates:

Section 9771, R.S. Mo. 1939, Annotated, reads as follows:

> "All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided."

Section 9781, R.S. Mo. 1939, the latter portion thereof, makes a certified copy of the birth certificate prima facie evidence of a person's age:

> "* * * And any such copy of the record of a birth or death, when properly certified by the State Registrar to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated."

A definition of prima facie evidence is found in 32 C.J.S., Section 1016, page 1040:

> "Prima facie evidence is that which, either alone or aided by other facts presumed from those established by the evidence, shows the existence of the fact which it is adduced to prove, unless overcome by counter evidence; evidence which, unexplained or uncontradicted, is sufficient to

> maintain the proposition affirmed. Prima facie evidence is sufficient, unless contradicted by other evidence, to establish for all purposes the existence of a fact in issue; that is, it is sufficient to satisfy the burden of proof and to support a verdict in favor of the party by whom it is introduced when not controverted by other evidence. It may be rebutted or contradicted by other evidence, and, unless there is no other controlling evidence and no discrediting circumstances, it is not conclusive and does not require a verdict for the party whose contention it supports."

The Court in the case of Gallup & Co., Inc. vs. Rozier et al, 90 S.E. Rep. 209, l.c. 212, said:

> "* * * but it is evidence to be weighed, not necessarily to be accepted as sufficient; that it calls for explanation or rebuttal, not necessarily that it is required; that it may make a case to be decided by the jury, not that it forestalls the verdict. Prima facie evidence, where it applies, does not convert the defendant's general issue into an affirmative defense. When all the evidence is in, the question for the jury is whether the preponderance is with the plaintiff. Such, we think, is the view generally taken of the matter in well-considered judicial opinions. * * * ".

In the case of Hente vs. Michie, 151 S.W. (2d) 107, l.c. 108, the Court said:

> "Plaintiff's evidence as to the date of his birth seems to be conclusive. We know of no more cogent or convincing proof of the date of a person's

> birth than the birth certificate filed and on record with the Bureau of Vital Statistics. This is corroborated by the positive testimony of the plaintiff, the record in the family bible and the church record of his baptism. The admission that he made an affidavit at the time he was married in Cairo, Illinois, August 22, 1931, that he was then twenty-one years of age, is not sufficient to overcome the solemn records to which we have heretofore referred. Moreover, it is a matter of common knowledge that misrepresentations frequently occur when an affidavit as to age is required in order to get a marriage license. The evidence of plaintiff definitely establishes the date of plaintiff's birth and that he was a minor under the age of twenty-one years when the judgment was rendered against him as surety on the bond, July 26, 1935."

In the case of State vs. Spinks, 125 S.W. (2d) 60, l.c. 65, the Court said:

> "Appellant says the age of the prosecutrix was not shown by competent evidence. She testified she was born July 18, 1922. A copy of the record or certificate of her birth on file with the State Board of Health at Jefferson City (State Registrar of Vital Statistics) was introduced showing that she was born July 18, 1922. It was not shown whether or not the copy of the record was certified by the proper officer, but no objection was made to the copy on that ground, the only objection offered being 'because it is not the original.' Appellant's contention seems to be based upon the claimed inadmissibility of the copy of the birth certificate. By Sec. 9052, R.S. 1929, Mo. St. Ann. Sec. 9052, p. 4193, a certificate of birth must be filed with the local registrar (of Vital Statistics) of the district in which the birth occurred,

> which certificate, by other sections of the statute, is to be transmitted to the State Registrar. By Sec. 9060 R. S. 1929, Mo. St. Ann., Sec. 9060, p. 4199, copies of such records, certified by the State Registrar are admissible as prima facie evidence of birth or death. As we have said, defendant did not object to the copy on the ground that it was not properly certified. If properly certified the copy was admissible. See State v. Worden, 331 Mo. 566, 56 S.W. 2d 595, 598."
>
> (Emphasis ours.)

In the case of State vs. Shelby, 62 S.W. (2d) 721, l.c. 724, the Court said:

> "The state introduced in evidence the original birth certificate of the prosecuting witness, which was produced and identified by the assistant state registrar of vital statistics as a permanent record of his office, and of which he was custodian. It is strenuously urged that it was error for the court to admit such birth certificate, for the reason that it appeared from the testimony of the assistant state registrar, as well as from the instrument itself, that the name of the child was not written therein by the attending physician who prepared the certificate, and that the same was written in different ink, by a different hand, and at a time subsequent to the filling in of the other parts of the blank. The evidence strongly tended to show that the name of the child was written in the same handwriting, and with the same ink as the signature of the local registrar. Appellant cites no authorities in support of his contention. The certificate in question is required by statute to be kept and preserved (article 2, chap. 52, Sec. 9040 et seq., R.S. Mo. 1929 (Mo. St. Ann. Sec. 9040 et seq.)). Section 9053, R.S. Mo. 1929 (Mo. St. Ann. Sec. 9053), provides

what the certificate of birth shall contain, and it will be observed that, by paragraph 2 thereof, it is provided: 'If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.' Then follows section 9054 (Mo. St. Ann. Sec. 9054), which, in substance, provides that the local registrar shall deliver to the parent of a child whose certificate of birth is presented without the statement of the given name a special blank for the supplemental report of such given name, which shall be filled out and returned to the local registrar as soon as the child shall have been named. It seems to us, under the facts above outlined, and in view of the statute just referred to, the court below, in the absence of evidence to the contrary, might properly have indulged the presumption of right acting and performance of duty by officials charged with the enforcement of the law governing registration of vital statistics with respect to the certificate in question, and admitted it on that ground. But there is another and more compelling reason why the action of the court in admitting the instrument was proper. By section 9060, R.S. Mo. 1929 (Mo. St. Ann. Sec. 9060), it is provided that a properly certified copy of the record of any birth registered under the provisions of article 2, Chapter 52, R.S. Mo. 1929, 'shall be prima facie evidence in all courts and places of the facts therein stated.' In the very recent case of State v. Worden (Mo. Sup.) 56 S.W. (2d) 595, 598, the question of the admissibility of a certified copy of such a certificate in a proceeding of this character was before this court. In an opinion by Judge White, it was held:

> 'Since original (birth) certificates * * * are required by the statute * * * to be permanently kept, such a certificate becomes an official record, which is always admissible in evidence. A copy of a public paper required to be filed, certified by the officer intrusted with its custody, is admissible in evidence if the original is admissible. (Citing cases.)' (Italics ours.) It necessarily follows that the converse of the latter proposition stated is true; that is, if the certified copy is admissible, then certainly the original is likewise admissible. It would be anomalous, indeed, to hold inadmissible an original document, a certified copy of which is by statute made prima facie evidence, and we decline to so hold."
>
> (Emphasis of last sentence ours.)

Conclusion

Therefore, it is the opinion of this department that the maximum age for which a boy can be sentenced for the commission of a crime, to the Missouri Training School for Boys at Boonville, Missouri, is sixteen years, and the maximum age for which a delinquent boy can be sent to the Missouri Training School for Boys at Boonville, is twenty years.

A certified copy of a birth certificate furnished by the Bureau of Vital Statistics is only prima facie evidence of a person's age, and does not take precedence over a person's age established by judgment of the court.

Respectfully submitted,

GORDON P. WEIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GPW:ir