

TRAINING SCHOOLS: Circuit court may modify its order of commit-
CIRCUIT COURTS: ment to state training schools.
JUVENILES:

August 6, 1947



Board of Training Schools
State of Missouri
Jefferson City, Missouri

Attention: Mr. Louis J. Sharp, Director

Gentlemen:

This will acknowledge receipt of your request for an official opinion which reads:

"From time to time the Board of Training Schools is faced with the problem of circuit and juvenile court judges wishing to make changes in court orders of commitment to the three training schools.

"These changes usually take one of these two forms:

1. The court desires to release the juvenile to the custody of some other agency or person, whether or not there is to be continuation of supervision or court jurisdiction, and enters a court order modifying the original judgment to provide for this change of custody and release from the training schools.

2. The court desires to reduce the period of commitment to provide for the termination of a commitment and thereby release the juvenile without further control.

"The Board of Training Schools would like to have an opinion on the following:

1. What responsibility the Board and the Superintendents have in recognizing such court orders as outlined in 1 and 2 above, after the juvenile has been accepted in a training school.

2. Whether or not a decision in a particular case would be conditioned on whether

or not the amending court order was filed during the same term of court or a subsequent term of court."

In construing your request, it is important that we examine Sections 9704 and 9715, R. S. Mo. 1939, which read:

"Sec. 9704. When any child coming under the provisions of this article shall be adjudged to be neglected or delinquent or in need of the care or discipline and protection, the court may make an order committing the child, under such conditions as it may prescribe, to the care of some reputable person of good moral character, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for neglected children, or to any institution incorporated under the laws of this state that may care for children, or to any institution or agency which now is or hereafter may be established by the state or county for the care of children; or the court may place the child in the care and control of a probation officer, and may allow such child to remain in its home subject to the visitation and control of the probation officer, to be returned to the court for further proceedings whenever such action may appear to the court to be necessary; or the court may authorize the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer and the further order of the court; or it may authorize the child to be cared for in some suitable family home in such manner as may be ordered by the court or may arrange for same through voluntary contributions or otherwise until suitable provision may be made for the child in a home without such payment. In case of a delinquent child the court may commit such child, if a boy, to a training school for boys, or to the Missouri reformatory, or, if a girl, to the state industrial home for girls, or, if a colored girl, to the state industrial home for negro girls.

The court shall not commit any child under the age of seventeen years to any jail or police station where such child may come in contact in any way with adults convicted or under arrest. All orders of the court touching the care or other disposition of any child shall be subject to such modifications from time to time as the court may consider to be for the best welfare of said child. In making commitments to associations or individuals the court shall place children as far as practicable with associations or persons having the same religious faith as the parents of such child. After any child shall have come under the care or control of the juvenile court as herein provided, any person who shall thereafter knowingly contribute to the delinquency or neglect of such child, shall knowingly disobey, violate or interfere with any lawful order of said court, with relation to said child, shall be guilty of contempt of court, shall be proceeded against as now provided by law and punished by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred dollars or by both such fine and imprisonment."

"Sec. 9715. Nothing in this article shall be construed to repeal any portion of the law relating to the state industrial home for girls or the Missouri reformatory; and in all commitments to either of said institutions the law in reference to said institutions shall govern the same."

The two foregoing statutory provisions are both contained in the same Article 10, Chapter 56, R. S. Mo. 1939. Neither of the foregoing provisions have been specifically repealed by the Legislature and since repeals by implication are not favored, we are of the opinion that if said provisions do not directly conflict in any manner with the Constitution or laws hereinafter referred to, with respect to having charge and control of said training schools, then said provisions shall remain in full force and effect.

We shall first relate a little history regarding the various training schools in this state. Said training schools

were formerly under the jurisdiction of the commission of the department of penal institutions (see Section 8894, R. S. Mo., 1939). Said commission was authorized to appoint a superintendent who was to be the chief executive officer of said institutions under the control of the commission of the department of penal institutions (see Sections 8994 and 8995, R. S. Mo., 1939). The foregoing provisions formerly gave the department of penal institutions the full control and management of Missouri Training Schools for Boys. Under Sections 9010 and 9012, R. S. Mo., 1939, the Legislature gave the commission of the department of penal institutions supervision and government of the State Industrial Home for Girls at Chillicothe. Under Section 9022, R. S. Mo., 1939, the same department was vested with similar authority over the Industrial Home for Negro Girls.

While the foregoing laws provided for the return of certain children placed in said institutions, to the court or magistrate sending them to said institutions, upon finding them to be incorrigible and providing how said court or magistrate shall then sentence them, furthermore such laws contained provisions that before any sentence made by certain courts could be executed, the commitment must have the endorsement thereon the approval of the circuit or probate court (see Sections 9017 and 9029, R. S. Mo., 1939), there is nothing in the foregoing statutes giving the commission of the department of penal institutions jurisdiction of said training schools that directly conflicts with Section 9704, R. S. Mo., 1939.

Subsequent thereto, the Constitutional Convention in 1944 proposed Section 38, Article IV of the Constitution of Missouri 1945, and the voters of this state at a special election held on the 27th day of February, 1945, adopted said constitutional amendment which on and after the 30th day of March, 1945, became the supreme law of the State of Missouri. The foregoing constitutional provision places all training schools in charge of a board of trustees to be appointed by the governor with the advice and consent of the Senate and reads:

"All state training schools and industrial homes for boys and girls shall be classified as educational institutions and shall be in charge of a board of six trustees, three from each of the two major political parties, appointed by the governor by and with the advice and consent of the senate. All employees of the board shall be selected and removed as provided for employees in the state eleemosynary institutions."

Thereafter, the 63rd General Assembly enacted a law to conform with the foregoing constitutional provision (see Sections 20 to 34, inclusive, pages 730-734, Laws of Missouri 1945). Section 20 of the Laws of Missouri 1945, page 730, vests in the state board of training schools full charge and control of all training schools which is, if possible, even broader than the foregoing constitutional provision. "Charge" has been defined by Webster's New International Dictionary, Second Edition, as follows:

"9. A person or thing committed or entrusted to the care, custody or management of another;

"in charge * * * having the charge or care of something, esp., temporarily; as, the officer or minister in charge."

Various decisions have defined the word "charge" as synonymous with "custody" (see *Randazzo vs. United States*, 300 F. 794, l.c. 797). Other insurance liability decisions in various states define the words "in charge of" as used in such policies to mean not mere possession but the right to exercise dominion or control of something (see *Sky et al., vs. Keystone Casualty Company*, 29 Atl. (2d) 230, l.c. 232-233; also *Cohen & Powell vs. Great American Indemnity Company*, 16 Atl. (2d) 354, l.c. 355; and *Homin vs. Cleveland and Whitehill*, 24 N.E. (2d) 136, l.c. 138). As can be seen by the foregoing definitions, said board of training schools under the foregoing statutes and constitutional provisions have almost unlimited authority relative to administrative management, course of study, recreation, rehabilitation and conduct of children committed to said institutions. However, nothing in said act of 1945 or Section 38, Article IV of the Constitution of Missouri 1945, in any manner conflicts with that part of Section 9704, R. S. Mo. 1939, which authorizes the circuit court that commits boys or girls to said training schools to modify the order of said court when in the court's opinion it is for the best welfare of the child. To prohibit this might be detrimental to a child in that some circuit courts might not be anxious to commit children to said institutions unless they at least have some authority or supervision thereafter to modify their orders when and if conditions and circumstances in their opinion warrant a modification of said order.

One of the cardinal rules of statutory construction is that two or more statutes, relating to the same subject, should be read together and harmonized, if possible, so as

to give full force and effect to each, and this rule applies not only to acts passed at the same session of the Legislature but also to those passed at prior and subsequent sessions (see State ex rel. Central Surety Insurance Corporation vs. State Tax Commission, 153 S.W. (2d) 43, 348 Mo. 171; also White River Drainage District vs. Lancaster, 29 S.W. (2d) 716, 325 Mo. 493).

In view of the foregoing, it is the opinion of this department that Section 9704, R. S. Mo. 1939, authorizing the circuit court to modify its order at any time when the court feels it is for the best welfare of the child committed by said court to said training school, does not conflict with the provisions of Section 9715, R. S. Mo. 1939, or with any law in effect at the time of said enactment or subsequent thereto, nor does it conflict with Section 58, Article IV of the Constitution of Missouri 1945, and therefore, same is still in full force and effect as of this date.

Answering your second query, it is the further opinion of this department that Section 9704, R. S. Mo. 1939, being more in the nature of a special statute authorizing the circuit court to amend its order at a subsequent date, possibly extending far beyond that term of the circuit court, that it would take precedence over any decision or statute holding that a circuit court may not change a judgment subsequent to the closing of the term of court at which said judgment was rendered. It is true that the appellate courts of this state have held that after the expiration of a term at which a judgment and sentence were pronounced, the criminal court is without jurisdiction to set them aside. In State vs. Lonon, 56 S.W. (2d) 378, l.c. 380, the court in so holding said:

"The only reason, assigned in appellant's motion, questioning the jurisdiction of the circuit court to try the defendant, was that the case had been dismissed against him and the court was without power to reinstate the case. Courts of general jurisdiction have inherent authority, during the term, to vacate any judgment or order that may have been made at that term. This was the rule at common law and prevails in most jurisdictions. (See cases cited.) * * *

See also Dusenberg vs. Rudolph, 30 S.W. (2d) 94, l.c. 96 (9), 325 Mo. 881, and Carrollo vs. United States, 141 F. (2d) 997. However, the order of the circuit court in this instance rendered under Section 9704, R. S. Mo. 1939, which is a special

statute, has the effect of being the exception to the foregoing rule and permits the circuit court to set aside orders rendered at a previous term of court. In *State vs. Richman*, 148 S.W. (2d) 796, 1.c. 799, the court in so holding said:

"In *State v. Harris*, 337 Mo. 1052, 1058, 87 S.W. 2d 1026, 1029, we said that if statutes are necessarily inconsistent that which deals with the common subject matter in a minute and particular way will prevail over one of a more general nature; and, citing authorities, we quoted the rule as stated in *State ex rel. County of Buchanan v. Fulks*, 296 Mo. 614, 626, 247 S.W. 129, 132, thus: "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." "

See also *State ex rel. R. Newton McDowell, Inc., vs. Smith*, 67 S.W. (2d) 50, 334 Mo. 653; also *State of Missouri vs. Ross*, 57 S. Ct. 60, 299 U.S. 72, 81 L. Ed. 46.

In view of Section 9704, supra, being a special statute, it will therefore prevail over any general provision regarding the time when circuit courts may modify judgments and under said section, the circuit court may modify its order committing said delinquent children to the state training schools in this state whenever said court is of the opinion that it is for the best welfare of said child.

CONCLUSION

Therefore, it is the opinion of this department that that part of Section 9704, R. S. Mo. 1939, authorizing the circuit court to modify its order when, in the opinion of the court, it is for the best welfare of the child committed to said training school, is still in full force and effect; and it is the further opinion of this department that decisions of the Supreme Court, holding that a circuit court may not change a judgment after the expiration of a term of court at which said judgment was rendered, do not apply in the case of a circuit judge committing a delinquent child to the Missouri State Training Schools.

Respectfully submitted,

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APPROVED:

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