

PENAL INSTITUTIONS: Void orders of a Court have no legal force in determining the place of imprisonment.

May 29, 1936.

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Mr. W. M. Oakerson  
Chief Clerk  
Board of Pardons and Paroles  
Jefferson City, Missouri

Dear Sir:

We acknowledge your request for an opinion dated May 21, 1936, which reads as follows:

"We have a girl at Chillicothe, Missouri, named Evelyn Lambert. In the January term of the Circuit Court of Cape Girardeau County, and on January 6, 1936, her commitment papers show that she was sentenced to 'two years in the State Penitentiary', and on the same date the commitment papers show the following order:

" 'That on account of defendant being eighteen (18) years of age, she, the said defendant be confined in the Industrial Home for Girls at Chillicothe, Missouri.'

"This girl was received at Chillicothe under the above commitment on January 9, 1936, but since then has shown herself to be incorrigible and she repeatedly tries to run away and induce other girls to run away with her. She was eighteen years old when her offense was committed. She is now nineteen years of age. She is a very disturbing element among other inmates and has threatened violence to the officers.

"In the April term of the Circuit Court of Cape Girardeau County, on May 13, 1936, the Court made an order that

'Evelyn Lambert be removed from the Industrial Home for Girls and that she be confined in the Missouri State Penitentiary to serve the balance of her sentence.'

"Under the original commitment and subsequent order of removal, would it be legal to transfer the girl to the Penitentiary?"

"If said original commitment and order of removal do not legally authorize a transfer, please advise what procedure can be taken in order to effect her transfer in a legal way."

Section 8364 R. S. Mo. 1929, pertains to the State Industrial Home for Girls and specifically designates the Court's jurisdiction to commit persons to the institution. We quote a part of said section.

"All commitments to the industrial home for girls of girls, over the age of twelve and under the age of eighteen shall be made by the juvenile juvenile division of the circuit court.\* \* \* \*"

Cape Girardeau County is a county of less than 50,000 inhabitants. Section 14162 R. S. Mo. 1929, provides in part as follows:

"The Cape Girardeau court of common pleas and all circuit courts in counties less than 50,000 population shall have original jurisdiction of all cases coming within the terms of this article. The proceedings of the court in such cases shall be entered in a book or books kept for that purpose, and known as the juvenile records, and the court shall be known as the Cape Girardeau court of common pleas and the circuit court, and may for convenience be called the juvenile court. The clerk of the Cape Girardeau court of common pleas and the clerk of the circuit court in such counties, shall act as the clerk of the juvenile court."

In the case of State v. Gregori 318 Mo. 998; 2 S.W. (2d) 747, l. c. 749, our Supreme Court said:

"Suffice it to say, whether it is a division of the circuit court or a separate and distinct tribunal, it is contemplated that only children, subject to the provisions of the act, are to be cared for or proceeded against therein, for it is limited to children coming within its scope.

"The juvenile Court Act, so called, subjects to its jurisdiction only minors under a certain age. Jurisdiction over others beyond the age limit prescribed by the act is by implication denied. The question before us is not the right to try a child within the age limit in the juvenile court for crime, but the jurisdiction of the juvenile court, relative to a criminal charge, over another without the age limit. As we have ruled, the Juvenile Court Act applies to children 16 years of age and under, that is, under the age of 17 years. As defendant was 17 years of age, the juvenile court was without jurisdiction to try him. His status remained that of any other citizen, to be tried by the court having jurisdiction of criminal offenses. Section 2436, Revised Statutes 1919, provides:

'The circuit courts in the respective counties in which they may be held shall have power and jurisdiction as follows: First--as courts of law, in all criminal cases which shall not be otherwise provided for by law.'

"We know of no enactment otherwise providing for a court to try a person, 17 years of age, for murder

May 29, 1936.

in the first degree. Defendant, 17 years of age according to the record, was not subject to the jurisdiction of the juvenile court, and that court could not try him."

CONCLUSION.

We are of the opinion that the provisions of Section 14162, supra, were not available to prisoner, Evelyn Lambert, allowing the Circuit Court discretion to try her in the Juvenile Division of said Court. Under the Gregori case, supra, her age precluded consideration of her case in Juvenile Court. We are of the opinion that under the provisions of Section 8364 R.S. Mo. 1929, supra, no person can be legally committed to the State Industrial Home for Girls, except pursuant to a hearing in the Juvenile Division of the Circuit Court, or a Juvenile Court.

The certified copy of the judgment and sentence upon which said prisoner is now held in the Industrial Home for Girls, which you submitted with your request, shows on its face that the proceedings had against Evelyn Lambert were in the Circuit Court of Cape Girardeau County, and that she was prosecuted under the general laws of this State prohibiting and punishing for carrying concealed weapons. Such being the fact, the Circuit Court's sentence to two years in the State Penitentiary is a governing binding sentence in her cause. That portion of the commitment which speaks of confinement in the State Industrial Home for Girls is a Court Order rendered beyond the jurisdiction of the Circuit Court in such cases made and provided. It should be treated as mere surplusage and should be disregarded by the Penal Board.

We are of the opinion that Evelyn Lambert should be delivered and booked in the State Penitentiary under the commitment now in the State Penitentiary under the commitment now in the hands of the Penal Board.

Respectfully submitted

APPROVED:

WM. ORR SAWYERS  
Assistant Attorney General.

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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