and the other valid, the construction which upholds its validity must be adopted. (School District No. 12 v. Pondera County, 89 Mont. 342, 297 Pac. 498; State v. Bowker, 63 Mont. 1, 205 Pac. 961.)

By Section 4 of the act it is provided that upon information given to the court by any person the court shall make a preliminary inquiry to determine whether the interests of the public or the child require further action. The court is authorized to make such informal adjustments as is practical, without a petition. If this particular provision is construed to mean that the court may make orders affecting the rights of any person without a hearing, such construction would render the act unconstitutional. However, this section may be construed to have reference to the judge or court securing an amicable adjustment of the matter by consent of the parties concerned, and if such voluntary arrangement is entered into the court has authority to not press the matter further. Such must be the construction of this section, as any other construction would render it unconstitutional.

The court in my opinion may not under this section order anyone to do anything.

The same section provides for the statement of the facts necessary to be incorporated in the petition and first provides for the statement of the facts bringing the child within the jurisdiction of the court and thereafter classifies five classes of facts which are to be likewise included in the petition, and the concluding sentence of the section provides that if any facts therein required are not known by the petitioner the petition shall so state. It is suggested that this statute or provision might be construed to relieve the petitioner from stating any or all facts conferring jurisdiction on the court, that is, the facts which bring the child within the provisions of the act. Such a construction would render the act unconstitutional and would be contrary to the decisions of our Supreme Court in the cases of In re Satterthwaite, 52 Mont. 550, 160 Pac. 346; State v. Freeman, 81 Mont. 132, 268 Pac. 168. However, in construing a statute the rule is that a relative and qualifying term or clause is to be construed to relate to the last or nearest sensible antecedent. (State v. Centennial Brewing

Opinion No. 156.

Child Delinquency—Delinquent Children—District Judges—Probation Officers—Juvenile Court.

Held: Interpretation of Provisions of Chapter 227, Laws of 1943.

December 11, 1943.

Mr. J. E. McKenna
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. McKenna:

You have requested an opinion relative to the constitutionality of Chapter 227, Laws of 1943.

This act is not altogether clear and certain sections of it are susceptible to various constructions, some of which if adopted would render at least certain portions of the act unconstitutional. However, the rule is that when a statute is capable of two constructions, one of which would render it invalid

Co., 55 Mont. 500, 179 Pac. 296; State v. Anderson, 92 Mont. 298, 13 Pac. (2nd) 231.) Applying this rule, this last sentence refers to the five clauses of facts specifically numbered and does not relieve the petitioner from setting forth the facts which bring the child within the provisions of the act and hence within the jurisdiction of the court. It is only the facts mentioned in the five numbered clauses which may be omitted from the petition by substituting therefor an allegation showing that the petitionar is without knowledge as to certain of these five clauses of facts.

Section 5 provides for the issuance of a citation and Section 6 provides the manner of service, and Section 7 provides in certain instances for the issuance of a warrant to bring parties before the court.

In certain instances the court is authorized by Section 6 to secure service by publication, and publication is not defined in the act, nor is the manner of publishing defined or directed. This word means the advising of the public or making known of something to the public for a purpose and any means which would give notice to the public of any matter desired to be brought to its attention would be classed as a publication. (50 C. J. 870.) Therefore, under this section the court may direct publication either by printing a copy of the citation in a newspaper or by posting notices. It is left for the court to determine in each case the manner in which publication is to be made.

Section 7 provides for the issuance of a warrant in cases where citation will not cause the interested parties to appear in court. The purpose of these sections is to require the interested parties to appear. Since this chapter is in the nature of a criminal statute, before the court may deprive persons of their rights or property it is necessary that they either appear, or if they fail so to do, be brought before the court. The purpose of authorizing a warrant is to enable the court to bring persons before it who otherwise would not appear.

In Section 10 of the act it is provided that if the court finds that the child is delinquent, **or otherwise within the provisions of this act**, it may by order duly entered proceed as therein provided.

The following comment has to do with the construction to be placed upon said section, especially as to the phrase, "or otherwise within the provisions of this act," and as to the question of the constitutionality of said section.

The entire act should be given a liberal construction as indicated by the provisions of Section 1. The pertinent provisions read as follows:

> "This act shall be liberally construed, to the end that its purpose may be carried out, to-wit: that the **care, custody, education** and **discipline** of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.
>
> "And that, as far as possible, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.
>
> "The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them." (Emphasis mine.)

Section 9 of Chapter 227 provides:

> "If, during the pendency of a criminal or quasi-criminal charge against any person in any other court, it shall be ascertained that said person was under the age of eighteen years at the time of committing the alleged offense, it shall be the duty of such court to transfer such case immediately, together with all papers, documents, and testimony connected therewith, to the juvenile court. The court making the transfer shall order the **child** to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such **child** in the custody of some suitable person, to appear before the juvenile court at a time designated. The juvenile court shall thereupon proceed to hear and dispose of such case in the same manner as

if it had been instituted in that court in the first instance." (Emphasis mine.)

Thus it can be seen by a reading of said Section 9 that it classifies any person under the age of twenty-one charged with having violated any law of the state or any ordinance of any city or town, prior to having become eighteen years of age as a **child.** In fact, a **delinquent child.**

Therefore, I believe that the phrase, **"otherwise within the provisions of this act,"** pertains to children other than delinquents as well as adults coming within the terms and provisions of the act, such as for example:

(a) Children (other than delinquents) whose surroundings are such as to endanger their health, morals, or welfare. (3rd par. Sec. 8.)

(b) Parents who wilfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school. (2d par. Sec. 3.)

(c) Children whose parents are guilty of violating any of the provisions of section 16 of the act, in which case the state may intervene to safeguard them from **neglect** or **injury** and enforce the legal obligation due to them and from them. (3rd par. Sec. 1.)

I believe that the district courts of the several counties of the state have judisdiction in all cases coming within the terms and provisions of this act and the exclusive jurisdiction in proceedings covered under the provisions of Section 3 of the act.

As to the constitutionality of said section 10, I believe the same to be constitutional for the following reasons:

(a) The first paragraph of Section 10 provides that the court **may** conduct the hearing in an informal manner. If the court shall find that the child is delinquent or **otherwise within the provisions of this act it may** by order duly entered proceed in the manner indicated under the various subdivisions of said section. Thus it can be seen that the procedure under said Section 10 is **not mandatory** but within the discretion of the court.

(b) The pertinent provisions of Section 3 (par. 3) provides that the child, or the parent or the guardian or other person having the care, custody and control of such child complained against, or any person interested in such child, shall have the right to demand a trial by jury, which shall be granted as in other cases, unless **waived,** or the judge of his own motion may call a jury to try such case.

The natural supposition would be that the court would, in the case of an informal hearing, inform any child, or other person, coming within the provisions of the act, of his constitutional rights, especially as to his right to a trial by jury.

Therefore, it is my opinion that should the interested parties waive a trial by jury that the court could proceed in an informal manner to do any one of the three things enumerated under subdivisions 1, 2 and 3 of said Section 10. In other words, a waiver of a trial by jury would allow the court to proceed in an informal manner to do what it felt was best for the welfare of the child in question.

When it is taken into consideration that no commitment to any institution under this act shall operate to impose any of the civil disabilities ordinarily imposed by conviction, and that no child shall be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, the construction here given to the section is not a harsh one, but rather one which will make the section operative under a liberal construction. We hold the said section 10 constitutional.

By Section 14 it is provided that in certain instances the court shall direct that children committed shall be a charge upon the county or the appropriate division thereof. The meaning of this clause "or appropriate division thereof" cannot in itself require or authorize the court to discharge any division of a county unless there is found in other statutes of the state some authority for making such charge, and in the absence of such provisions elsewhere this provision becomes superfluous and of no meaning in the law, but this does not render the act **un**constitutional or unworkable.

By Sections 17, 18 and 19, where parents are found guilty of certain offenses, the sentence may be suspended and in certain instances the court may require a bond and provide its conditions, **which** may be forfeited by the court and en-

forced without action by the issuance of an order to show cause and hearing thereon. It will be observed that these provisions do not differ substantially from the provisions with reference to the giving of bail (Sections 12160 to 12164, Revised Codes of Montana, 1935). Any one who gives such a bond or executes a bond of this character does so voluntarily and the terms and provisions of the statute become a part of the bond and the principal and sureties, if any, consent to the procedure provided by these sections.

Section 20 provides that in districts where there is more than one judge, one of the judges shall be designated to act as juvenile judge, but in all such districts where there is more than one county either judge may act. As our judicial districts are at present set up this section applies only to Silver Bow County, as the second judicial district is the only judicial district having only one county in the district. It is suggested that this provision impinges upon the powers of the court. This is a matter which may be taken care of by the rules of the court as provided by Section 8845, Revised Codes of Montana, 1935. And if the judges cannot agree upon a satisfactory rule the Supreme Court is authorized to make rules for them.

When properly construed, Chapter 227 is not unconstitutional, but it must not be construed in such a way as to permit persons to be convicted under its provisions or deprived of their liberty or rights without a charge being filed, notice given, a hearing had, and, if demanded, before a jury, and appropriate order thereafter made.

Sincerely yours,
R. V. BOTTOMLY
Attorney General