

Opinion No. 128.

**Juvenile Delinquents — Commitments
Juvenile Delinquents—State Industrial
School, age when child may be
accepted.**

Held: Child under twelve years cannot be committed to State Industrial School. If commitment shows child is twelve years of age at time of commitment, he should be received in State Industrial School.

September 22, 1943.

Mr. Carl M. Horn
President
Montana State Industrial School
Miles City, Montana

Dear Mr. Horn:

You request my opinion whether a child under the age of twelve years may be admitted to your school.

Section 2, Chapter 156, Laws of 1943, provides:

"Said school (Montana State Industrial School) shall be for the keeping and reformatory training of all male youths between the ages of twelve (12) and twenty-one (21) years, who are residents of the State of Montana and who have been regularly committed to said school by a duly authorized court. . ."

This was an amendment to Section 12494, Revised Codes of Montana, 1935, specifying the age limits as eight to twenty-one years of age.

The 1943 Session also enacted new juvenile delinquency legislation. (Chapter 227, Laws of 1943.) This new legislation covers much the same ground as Sections 12275 to 12301, Revised Codes of Montana, 1935. While the cited sections of the code must be construed, when occasion arises, to have been superseded by Chapter 277, Laws of 1943, it is significant the new chapter does not specifically repeal any of the sections contained in Sections 12275 to 12301, Revised Codes of Montana, 1935, the only repeal clauses being the usual one to the effect all acts and parts of acts in conflict therewith are repealed. The result is the parts of Sections 12275 to 12301, Revised Codes of Montana, 1935, which are not in conflict with any part of Chapter 227, Laws of 1943, are still in effect.

Chapter 227, Laws of 1943, is not in conflict with the portion of Section 12288, Revised Codes of Montana, 1935, providing:

"If any child is wayward and unmanageable the court may commit him or her to the industrial school, or to any other state penal or reformatory institution authorized by law to receive such boy or girl subject to such conditions as are already provided by law for the reception of such children in said school or institution."

It is thus seen, the power of the Court to commit is limited to those instances where your institution is authorized by law to receive the child, and by the particular limitation contained in Section 2, Chapter 156, Laws of 1943, your institution is limited to youths between the ages of twelve

years and twenty-one years, who are residents of the State of Montana.

The rule is laid down in 31 C. J. 1102, that children who may be committed must fall within the classification established by law; it is within the power of the legislature to classify persons by their age, and when such power is exercised, the infant must fall within the age prescribed by statute, in order to be subject to its provisions.

Section 11, Chapter 227, Laws of 1943, provides:

"Whenever under any of the provisions of this Act the court shall order any delinquent child committed to the Montana state industrial school, the form of commitment shall be that prescribed by Section 12503, Revised Codes of Montana, 1935."

Section 12503, Revised Codes of Montana, 1935, provides the order of commitment, to be signed by the committing judge, making it the duty of the judge to make a judicial finding as to the age of the child. This commitment must be delivered to you before a child can be received in your institution.

The rule laid down in 31 C. J. 1112 is that if the Court has jurisdiction in the premises, the judgment, order, or decree is final, as to all parties to the proceeding on the same state of facts, and not subject to collateral attack.

It is to be noted by a reference to Section 3 of Chapter 227, Laws of 1943, when jurisdiction has been obtained by the Court in the case of any child, such child continues under the jurisdiction of the Court until he becomes twenty-one years of age, unless discharged prior thereto. Further, by Section 8, 10 and 12, the Court has a large measure of discretion in the disposition to be made of the child, and must not necessarily commit the child to an institution upon the hearing, but may make such disposition of the child as is provided in the sections, and may from time to time modify any order made. By reason of these provisions, the Court may, when deemed proper modify an order which does not commit a child to your institution and commit such child thereto; however, the same situation would prevail as above set forth. That is, if a prior order is modified so as to com-

mit the child to your institution, the modification must be subject to the age limit of twelve years.

It would, therefore, follow that your institution has no authority to accept a child under the age of twelve years. However, if the commitment delivered to you at the time of the delivery of the child shows the child to be twelve years of age at that time, you should accept the child. If the commitment shows the child to be under that age you should refuse to accept the child.

Sincerely yours,
R. V. BOTTOMLY
Attorney General