

STATE OF TENNESSEE

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Opinion No. 08-27

Compulsory School Attendance and Truancy Statutes

QUESTIONS

1. If a child subject to compulsory school attendance under Tenn. Code Ann. § 49-6-3007 is adjudicated to be in violation of that provision, what dispositions are available to a juvenile court?
2. Does a juvenile court have the authority to place under an order regulating conduct a child who has been adjudicated as unruly?
3. May a child who was adjudicated as unruly be adjudicated as delinquent for violating an order requiring compulsory school attendance by committing additional acts of truancy, and may a juvenile court use general dispositions for delinquents or must the court use the provisions of Tenn. Code Ann. § 49-6-3007(f)?

OPINIONS

1. If a child subject to compulsory school attendance under Tenn. Code Ann. § 49-6-3007 is adjudicated to be in violation of that provision, the juvenile court may enter several dispositions as allowed by Tenn. Code Ann. §§ 37-1-132, 37-1-168, 37-1-169 and 49-6-3007(f).
2. No. A juvenile court does not have the authority to place under an order regulating conduct a child who has been adjudicated as unruly.
3. No. A child who has been adjudicated as unruly cannot be adjudicated as delinquent for violating an order requiring compulsory school attendance by committing additional acts of truancy. It follows, therefore, that the juvenile court cannot use general dispositions for children adjudicated as delinquents, and must rely upon the dispositions prescribed by Tenn. Code Ann. § 49-6-3007(f).

ANALYSIS

1.

Sections 37-1-103 and 37-1-104 of the Tennessee Code govern the subject matter jurisdiction of the juvenile court. As relevant here, the juvenile court has exclusive original jurisdiction in cases in which a child is alleged to be “unruly.” Tenn. Code Ann. § 37-1-103(a)(1).¹ An “unruly child” “means a child in need of treatment and rehabilitation who:”

(i) *Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007; or*

(ii) *Habitually is disobedient of the reasonable and lawful commands of the child’s parent(s), guardian or other legal custodian to the degree that such child’s health and safety are endangered; or*

(iii) *Commits an offense that is applicable only to a child; or*

(iv) *Is away from the home, residence or any other residential placement of the child’s parent(s), guardian or other legal custodian without their consent. Such child shall be known and defined as a “runaway[.]”*

Id. at § 37-1-102(b)(23)(A) (emphasis added).²

Tennessee law vests the “sole responsibility and authority for the enforcement of compulsory attendance laws, compiled in this part, . . . in the local board of education and its designated employees and officers.” Tenn. Code Ann. § 49-6-3006(a). In unruly proceedings, the director of schools of the locality must report to the juvenile court “any child who is habitually and unlawfully absent from school.” Tenn. Code Ann. § 49-6-3007(f).³

As with other proceedings in juvenile court, unruly proceedings are commenced by filing a petition and by the issuance of summons. Tenn. Code Ann. §§ 37-1-120 and 37-1-121(a). Unruly proceedings consist of two phases: an adjudicatory hearing and a dispositional hearing. Tenn. R. Juv. P. 27(b). In the adjudicatory phase, the juvenile court must determine whether “the allegations of the petition are sustained.” *Id.* The petitioner bears the burden to prove the unruly charge by

¹See also Tenn. Code Ann. § 49-6-3010(a).

²A student “who has been absent an aggregate three (3) days without adequate excuse may be deemed habitually truant.” Tenn. Code Ann. § 49-6-3007(i)(3).

³Church-related and private schools lack standing to file petitions in juvenile court seeking to adjudicate children as unruly. Op. Tenn. Att’y Gen. No. 00-06 (Jan. 11, 2000).

clear and convincing evidence. Tenn. R. Juv. P. 28(e)(1). If the petitioner fails to prove the unruly charge, the court “shall enter an order dismissing the petition.” *Id.* If, however, the unruly charge is proved by clear and convincing evidence, the juvenile court “shall enter a finding of guilty and fix a time for a dispositional hearing to be held in accordance with Rules 18, 32 and 33 of these rules and, where appropriate, provide for disposition of the child pending the dispositional hearing.” Tenn. R. Juv. P. 28(e)(2).

At the dispositional phase, the juvenile court may enter several dispositions against a child who has been adjudicated as unruly, keeping in mind the child’s best interest and in accordance with certain provisions of Title 37 of the Tennessee Code:

. . . each case [is] to be dealt with in such manner as the judge may determine to be in the best interest of the child, consistent with the provisions of §§ 37-1-132, 37-1-168 and 37-1-169 and in the event the child is adjudicated to be unruly, the judge may assess a fine of up to fifty dollars (\$50.00) or five (5) hours of community service, in the discretion of the judge, against the parents or legal guardians of children in kindergarten through grade twelve (K-12) if the child is absent more than five (5) days during any school year.

Tenn. Code Ann. § 49-6-3007(f).

Tennessee law also allows the juvenile court to enter a disposition as though the child had been adjudicated delinquent,⁴ but does not permit the juvenile court to place the unruly child on probation under the supervision of the Department of Children’s Services (“DCS”) unless the child also was adjudicated as delinquent:

If the child is found to be an unruly child, the court may make such disposition as authorized by § 37-1-131(a)(1), (2), (5), or (7) that is best suited to such child's treatment. However, no child found to be an unruly child may be placed on probation under the supervision of the department, unless such child is found to also be a delinquent child or is found to have committed a violation of a valid court order as provided for in the Appendix to the Tennessee Rules of Juvenile Procedure. No county government may be required to increase local funding to implement this provision. The court has the additional dispositional alternative of ordering the department to provide non-custodial services to a child found to be unruly.

Tenn. Code Ann. § 37-1-132(a) (emphasis added).

⁴The child will remain “legally an unruly, not delinquent, child in all other respects.” Op. Tenn. Att’y Gen. No. 87-120 (July 23, 1987).

The juvenile court also may remove a child from his or her parents' custody, provided that the child is placed in a setting that presents the least drastic or restrictive alternative and that it is in the child's best interest. Tenn. Code Ann. § 37-1-132(b)(1). Should the juvenile court choose to commit the child to DCS custody, it must first refer the child to juvenile-family crisis intervention services, and DCS must then certify to the juvenile court that no less drastic alternative exists:

If the court desires to commit an unruly child to the custody of the department of children's services, it shall, prior to ordering commitment, refer such child to the department's juvenile-family crisis intervention program under § 37-1-168. The court may commit the child to the department after such juvenile-family crisis intervention program certifies to the court that there is no other less drastic measure than court intervention. Nothing in this subdivision (b)(2) shall preclude placing a child in protective service custody.

Tenn. Code Ann. § 37-1-132(b)(2).

In light of these authorities, this Office concludes that the juvenile court may enter several dispositions as allowed by Tenn. Code Ann. §§ 37-1-132, 37-1-168, 37-1-169 and 49-6-3007 for a child charged and adjudicated as unruly in connection with violations of Tenn. Code Ann. § 49-6-3007. As a threshold matter, to be adjudicated as unruly, Tenn. R. Juv. P. 28(e)(1) requires that the petitioner establish by clear and convincing evidence that a child "has been absent an aggregate three (3) days without adequate excuse." Tenn. Code Ann. § 49-6-3007(i)(3). Once the child is adjudicated as unruly, the juvenile court may proceed to the dispositional phase of the proceeding. Tenn. Code Ann. § 49-6-3007(f) allows the juvenile court, as a disposition in an unruly proceeding, to assess a \$50 fine or five hours of community service "*against the parents or legal guardians of children in kindergarten through grade twelve (K-12) if the child is absent more than five (5) days during any school year.*" (Emphasis added).

In addition, Tenn. Code Ann. § 49-6-3007(f) cross-references other provisions of the Code that permit the juvenile court to enter other dispositions for an unruly child. The juvenile court, for instance, may enter any of the following dispositions for truant children under Tenn. Code Ann. § 37-1-132(a): the juvenile court may enter a disposition as though the child had been adjudicated dependent and neglected, Tenn. Code Ann. § 37-1-131(a)(1); assuming that the child is also adjudicated as delinquent, or assuming that the child violated a "valid court order,"⁵ the juvenile court may place the child on probation under DCS supervision, Tenn. Code Ann. § 37-1-131(a)(2); the juvenile court may assess a fine of \$50 against the child for each violation of state law or municipal ordinances, Tenn. Code Ann. § 37-1-131(a)(5); it may order the child to perform community service, Tenn. Code Ann. § 37-1-131(a)(7); or it may order DCS to provide "non-

⁵There are several substantive requirements that the juvenile court must meet in order to enter a "valid court order." See Tenn. R. Juv. P. Appendix (incorporating 28 C.F.R. § 31.303(f)(3)). As the Supreme Court recently noted, these requirements are mandatory and any deviation therefrom will result in an invalid order. *State v. Rodgers*, 235 S.W.3d 92, 96 (Tenn. 2007).

custodial services” to an unruly child, Tenn. Code Ann. § 37-1-132(a). Further, other dispositions are available to the juvenile court. If the juvenile court finds that it is in the child’s best interest, it may remove the child from his parent or guardian, and it must place him “with the person, agency or facility that presents the least drastic alternative.” Tenn. Code Ann. § 37-1-132(b)(1). Should the juvenile court desire to commit an unruly child to DCS custody, however, “it shall, prior to ordering commitment, refer such child to [DCS]’s juvenile-family crisis intervention program under § 37-1-168.” Tenn. Code Ann. § 37-1-132(b)(2). To order commitment of an unruly child, DCS must first certify to the juvenile court that “there is no other less drastic measure than court intervention.” *Id.*

2.

In general, subject matter jurisdiction concerns the authority of a particular court to hear a particular controversy. *Meighan v. United States Sprint Comm. Co.*, 924 S.W.2d 632, 639 (Tenn. 1996) (citation omitted). A court’s subject matter jurisdiction “relates to the nature of the cause of action and the relief sought and is conferred by the sovereign authority which organizes the court.” *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870); *Turpin v. Conner Bros. Excavating Co., Inc.*, 761 S.W.2d 296, 297 (Tenn. 1988)). Accordingly, subject matter jurisdiction does not depend upon the conduct or agreement of the parties. *Shelby County v. City of Memphis*, 365 S.W.2d 291, 292 (Tenn. 1963). Tennessee’s courts derive subject matter jurisdiction from the state constitution or from legislative acts. *Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004); *Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996). “Courts may not exercise jurisdictional powers that have not been conferred on them directly or by necessary implication.” *Osborn*, 127 S.W.3d at 739 (citing *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001)). If a court lacks subject matter jurisdiction, it cannot enter valid and enforceable orders. *Brown v. Brown*, 281 S.W.2d 492, 497 (Tenn. 1955).

It is well-established that juvenile courts are courts of limited jurisdiction. *Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976). The juvenile court’s subject matter jurisdiction is defined by statute. *Id.* As a tribunal created by statute, a juvenile court has “jurisdiction over matters relating to the care, control and custody of infants, but can exercise such jurisdiction and powers only as have been conferred on [it] by the statute creating [it].” *Hyatt v. Bomar*, 358 S.W.2d 295, 296 (Tenn. 1962) (quotation marks omitted). All juvenile courts in Tennessee “have all of the jurisdiction, authority, rights, powers and duties prescribed by the provisions of” Part 1, Chapter 1 of Title 37 of the Code. Tenn. Code Ann. § 37-1-101(c).

Given these principles, this Office concludes that a juvenile court does not have the authority to place under an order regulating conduct⁶ a child who has been adjudicated as unruly. We have been unable to find any statute or other legal authority that permits the juvenile court “directly or

⁶Although the request uses the phrase “Order Regulating Conduct” as if it were a formally recognized legal term under the Tennessee Code and/or the Rules of Juvenile Procedure, our research indicates that no such term is used in Tennessee law.

by necessary implication,” *Osborn*, 127 S.W.3d at 140, to enter an order regulating conduct. The juvenile court, however, may enter a disposition for a child who has been adjudicated as unruly directing him or her to comply with the compulsory school attendance statutes, provided that such disposition is in the child’s best interest. Tenn. Code Ann. § 49-6-3007(f).

3.

This question assumes that a child who has been previously adjudicated as unruly and is ordered to comply with the compulsory school attendance law violates such an order by committing additional acts of truancy. Based on these premises, the question asks whether the child may be adjudicated as *delinquent* for violating such an order, and whether the juvenile court may enter delinquent dispositions or the dispositions prescribed by Tenn. Code Ann. § 49-6-3007. The answer to the question hinges on whether a violation of an order requiring compulsory school attendance constitutes a “delinquent act.” Under Tennessee law, a “delinquent act”

. . . means an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(23)(A)(iii) and the crime is not a traffic offense as defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony[.]

Tenn. Code Ann. § 37-1-102(b)(9).

This Office has recently opined that, under this provision, only the following acts are delinquent: (1) a crime under any State law; (2) a crime under local law; (3) a crime under federal law; (4) failing to stop when involved in an accident, in violation of Tenn. Code Ann. § 55-10-101; (5) driving while under the influence of an intoxicant or drug; (6) vehicular homicide; and (7) any other traffic offense classified as a felony. Op. Tenn. Att’y Gen. No. 07-48 (April 10, 2007). Because the definition of “delinquent act” is clearly circumscribed and does not include the violation of an order requiring compulsory school attendance, this Office concludes that a child who was adjudicated as unruly cannot be adjudicated as delinquent for violating an order requiring compulsory school attendance by committing additional acts of truancy. In essence, the violation of an order requiring compulsory school attendance by a child does not constitute a “delinquent act.” The child’s additional acts of truancy can only lead to a new adjudication of unruliness. It follows, therefore, that the juvenile court cannot use general dispositions for delinquents, and must rely upon the dispositions prescribed by Tenn. Code Ann. § 49-6-3007(f) and by the provisions cross-referenced therein.⁷

⁷We note that the juvenile court is also empowered to punish by contempt any person who disobeys an order of the court, or who obstructs or interferes with the proceedings, by imposing a fine or imprisonment. Tenn. Code Ann. § 37-1-158. Contempt, however, is not a delinquent act. Op. Tenn. Att’y Gen. No. 07-48 (April 10, 2007).

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