

**SHERIFF'S FEES:** Sheriff is entitled to retain fees earned in juvenile proceedings.

July 18, 1946



Mr. Elvin S. Douglas  
Prosecuting Attorney  
Polk County  
Bolivar, Missouri

Dear Sir:

This department is in receipt of your recent letter requesting an opinion on the following facts:

"Within the meaning of the Acts of the Legislature relating to the compensation of sheriffs, do you consider the services of the sheriff in serving a summons on parents, and warrants on their minor children who are alleged to be delinquent, and his other services related thereto, such as transporting said juveniles, who are alleged to be delinquents, to another county where they have adequate facilities for caring for such children, as criminal work, for which he is paid a salary, or as civil work in connection with which he would be entitled to retain all fees earned?

"Would your opinion be any different in cases where the notices served on parents in the nature of a summons, and the warrants or orders by the clerk to take children in custody, where it is alleged that the children are neglected instead of being delinquent."

Your attention is called to Section 96.73, R.S.Mo. 1939, which defines neglected and delinquent children. Without

quoting the section, which is very long, we will say that the definition of a delinquent child includes the violation of the criminal laws and many other violations of moral and social regulations. The definition of a neglected child is practically the same, except that it does not include violations of the criminal statutes.

Section 9674, R.S. Mo. 1939, provides that the juvenile court shall have jurisdiction to try persons charged as delinquents and neglected children. This section also provides that the trial of such a proceeding shall be governed by the rules of Criminal Practice and Procedure.

Article VI, Section 13 of the 1945 Constitution, which defines the duties of the sheriff in criminal matters, is as follows:

"All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

You will note that this section provides a salary for his services in connection with persons accused of or convicted of a criminal offense. The question, therefore, would be, is the trial of delinquent and neglected children a matter in connection with a person accused or convicted of a criminal offense.

Section 9700, R.S. Mo. 1939, provides that any petition alleging a child to be delinquent may be dismissed and such child prosecuted under the general criminal laws. As can be readily seen, this section specifically states that such child is alleged to be a delinquent and not, in such proceeding, accused of a criminal offense.

The Supreme Court of Missouri, in passing upon the question as to whether or not a delinquency proceeding is the prosecution of a criminal offense, said in the case of State v. Trimble, 63 S.W. (2d) 37, l.c. 38, 39 (the opinion is lengthy, but we have set it out here because it definitely decides the question):

"From the opinion of the Court of Appeals we learn that the defendant, Witt, was proceeded against in the juvenile court at Kansas City, Mo. The probation officer filed an information against Witt alleging that he was under the age of seventeen years. It further alleged or charged that Witt was a delinquent child within the meaning of the law, that he had committed the crime of seduction, and that he was guilty of the crime of rape. The court charging rape was dismissed. No preliminary hearing was granted. A trial before a jury in the juvenile court resulted in a verdict of guilty as charged in the information. Thereupon the juvenile court, or judge, entered a judgment finding that Witt was a delinquent child within the meaning of the law, and imposed a sentence of four years' confinement in the Missouri Reformatory at Boonville, Mo.

"From this sentence Witt asked that he be granted an appeal to the Supreme Court. The trial court, however, granted the appeal to the Kansas City Court of Appeals, which court assumed jurisdiction of the case, and reversed and remanded it for a new trial. \* \* \* \* Respondents, judges of the Court of Appeals, are represented in this court by counsel who represented Witt in the Court of Appeals. He has briefed the case for respondents, and, while he is satisfied with that part of the opinion reversing and remanding the case for a new trial, he contends here, as he did in the Court of Appeals, that his client, Witt, had been convicted of a fel-

ony, and therefore the Supreme Court, and not the Court of Appeals, had appellate jurisdiction of the case.

"The only theory upon which this court would have appellate jurisdiction of this case is that the act charged by the information of the probation officer against Witt, which is alleged to have rendered him a delinquent child, was a felony. If it can be said that defendant was convicted of a felony by the proceedings against him in the juvenile court, then the whole proceeding was null and void. *State ex rel. v. Walker and Ex parte Bass, supra.* Prosecutions for felony can only be instituted by information of the prosecuting attorney after a preliminary hearing has been had, or by an indictment of a grand jury.

"The Juvenile Act, article 8, chapter 125, R.S. Mo. 1929 (section 14136 et seq. (Mo. St. Ann. Sec. 14136 et seq.)), is a complete law within itself, dealing with minors under the age of seventeen years. The purpose of the Juvenile Law is not to convict minors of criminal acts, but to safeguard and reform children that may have erred and have been declared delinquent and to provide for children that may be declared neglected. For a full discussion of the purposes of juvenile laws see *Ex parte Januszewski (C.C.) 196 F. 123; 31 C. J. 1101, Sec. 226.* The Juvenile Act authorizes the juvenile judge, if he deems that a child is not a fit subject to be dealt with in the juvenile court, to dismiss the proceedings and order the child to be prosecuted under the general law. Section 14163, R.S. Mo. 1929 (Mo. St. Ann. Sec. 14163). A minor under the age of seventeen years cannot be convicted of a crime in a proceeding in a juvenile court, as the term 'conviction' is understood in law. *State ex rel. v. Walker and Ex parte Bass, supra; State v. Naylor, 328 Mo. 335, 40 S.W. (2d) 1079, loc. cit.*

1082 (6). The juvenile court can only adjudicate a child a neglected child or a delinquent child. The two terms have a distinct and separate meaning under the Juvenile Act. A child may be of good character, and yet, through no fault of its own, be declared a neglected child. A delinquent child means one who has been guilty of violations of the law or is incorrigible, vicious, or immoral. Section 14136, R. S. Mo. 1929 (Mo. St. Ann. Sec. 14136); Ex parte Naccarat, 328 Mo. 722, 41 S.W. (2d) 176. If a child is proceeded against as a delinquent, the final judgment of the juvenile court, if against the child, can only be a judgment declaring it to be delinquent. It is immaterial whether the misconduct charged against the child, by the information, consists of violations of the criminal statutes or of conduct, though not violations of the law, which nevertheless renders the child incorrigible, vicious, or immoral. In either case the judgment must be that the child is a delinquent. The juvenile court then has the authority to place the minor on probation or in some institution other than the penitentiary. Section 14151, R. S. Mo. 1929 (Mo. St. Ann. Sec. 14151); Ex parte Bass, supra; 31 O. J. page 1111, Sec. 245.

"Section 14137, R.S. 1929 (Mo. St. Ann. Sec. 14137) provides that the procedure governing the conduct of criminal cases shall be followed in those cases in the juvenile courts where a child is charged with acts that are violations of the criminal statutes. It also provides that a trial by jury may be had. This, however, is not mandatory except when demanded. In all other cases trial by jury is not authorized. The provisions of the above section do not transform the case into a criminal prosecution, but only prescribe the manner in which the trial should be conducted, as was said by this court in State ex rel. V. Buckner, 300 Mo. 359, 254 S.W. 179, 182 (9, 11): 'The charge is that he is a delinquent child, and

the proof of it is alleged to be that he is guilty of rape. It is not sought to punish him as a rapist, but to reform him from his state of delinquency.'

"Section 14136, R.S. Mo. 1929 (Mo. St. Ann. Sec. 14136) provides: 'Any disposition of any delinquent child under this article, or any evidence given in such cases shall not in any civil, criminal or other cause or proceeding whatever in any court be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases against the same child under this article.'

"This proviso clearly indicates that any disposition of a case in a juvenile court shall not be considered a conviction of crime. It protects the child, in that the adjudication of delinquency cannot be later referred to in any proceeding, either civil or criminal, except in a subsequent case in the juvenile court. A conviction of crime under the law may always be used against a person in either civil or criminal cases. This court in banc in *State ex rel. v. Buckner*, supra, 300 Mo. 359, 254 S.W. loc. cit. 181 (3, 5) said: 'A proceeding under the act, the aim of which, as in this case, is the exertion of the state's power, *parens patriae*, for the reformation of a child and not for his punishment under the criminal law, is not a criminal case, and the constitutional guaranties respecting defendants in criminal cases do not apply. This is obviously true and is the rule of the decisions.' (Italics ours.)

"Many cases from other jurisdictions are cited as authority for that holding. See, also, 31 C. J. p. 1105, Sec. 231, 232; *Ex parte Naccarat*, 328 Mo. 722, 41 S.W. (2d) 176, loc. cit. 178 (4, 5). The case not being a criminal prosecution, it follows that the Court of Appeals properly retained jurisdiction of it. We have treated this question somewhat at length because of the

vigorous oral argument, by attorney for Witt, to the effect that his client had been convicted of a felony, and that the proceeding in the juvenile court was a criminal prosecution and not a civil proceeding. The Court of Appeals by its opinion correctly disposed of this question."

There can be no doubt, after reading this opinion, but what the nature of a delinquency proceeding is not criminal and that the person charged is accused as a delinquent and not a person accused of a criminal offense, as provided by the Constitution of 1945.

Conclusion.

It is the opinion of this department that the sheriff is entitled to retain the fees accruing to his office in juvenile proceedings of delinquent and neglected children.

Respectfully submitted,

W. BRADY DUNCAN  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General