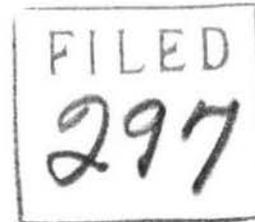


JUVENILE COURT: Prosecuting attorney to furnish legal
JUVENILE OFFICER: advice to juvenile officer but not par-
PROSECUTING ATTORNEYS: ticipate in court proceedings.

OPINION NO. 297

August 17, 1967

Honorable Earl R. Blackwell
State Senator - 20th District
Missouri Senate
Capitol Building
Jefferson City, Missouri



Dear Senator Blackwell:

In your letter of July 2, 1967, you requested an opinion from this office concerning a letter you received from a juvenile officer which reads as follows:

"Our office would like to have an opinion on Juvenile Code 211.411 which states that 'Law enforcement officials to assist and cooperate with juvenile officers' 1. It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices.

"To what extent can we ask the Prosecuting Attorney for his cooperation? In as much as with the new supreme court decision, they recommend that all Juvenile Proceedings become Advisory Proceedings and that the Juvenile Officers case be presented by an attorney on delinquency cases."

We assume the Supreme Court decision to which you refer is Re Gault, 18 L. Ed. 2d 527, decided by the United States Supreme Court May 15, 1967, which in substance holds that the fundamental rights of due process of law apply to juvenile court proceedings in the same manner as it applies to proceedings involving adults.

Section 211.411, RSMo 1959, provides in part:

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"1. It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices."

We do not believe this statute conflicts in any manner with the Gault decision and that the provisions of this section are valid.

Section 211.360, RSMo 1949, made it the duty of the prosecuting attorney to investigate and file a complaint or petition in the juvenile court in cases involving neglected or delinquent children. This section was repealed in 1957 and Section 211.411 was enacted. In *State v. Taylor*, 323 S.W. 2d 534, the Springfield Court of Appeals held that the prosecuting attorney was not authorized to file a complaint under the new statute. In discussing the effect of the repeal of Section 211.360 and the enactment of Section 211.411 the court stated, l.c. 537:

"Nowhere in the new act do we find any power or authority in the prosecuting attorney to institute the proceeding. Section 211.360, Laws of 1957, p. 658 (Section 211.411, V.A.M.S.), provides that he, and certain other officers, shall aid and assist the juvenile officer, but it does not purport to re-endow the prosecuting attorney with the powers set forth in the expressly repealed Section 211.360.

"[2,3] It would seem to us that it was the intention of the legislature to take completely away from the prosecuting officers any direct connection with the juvenile proceeding so as to lessen the 'stigma' of being involved in such proceeding. It is our conclusion that, in the words of the eminent authority who reviewed the proposed code while it was yet before the 1957 legislative session:

'Under the proposed act, prosecuting officials are not authorized to institute juvenile court proceedings, and informations and sworn complaints are eliminated. Only the juvenile officer is authorized to start the proceedings.'
(Our italics)"

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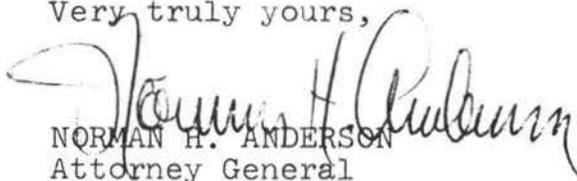
We believe that it was the intention of the legislature when it repealed Section 211.360 and enacted Section 211.411 to completely divorce the prosecuting attorney from actively participating in any juvenile court proceeding. We believe his duties are limited to furnishing legal advice to the juvenile officer concerning the law but not to appear or represent the juvenile officer in the juvenile court. The fact that Section 211.411 also requires the county counselor and city attorney to aid and cooperate with the juvenile officer in the same manner as required by the prosecuting attorney supports this view. Certainly the city attorney and county counselor are not required to represent the juvenile officer in any court proceeding and likewise, it is our opinion that it is no longer the duty of the prosecuting attorney to do so.

CONCLUSION

It is the opinion of this office that under Section 211.411, Laws of 1957, p. 642, it is the duty of the prosecuting attorney to furnish legal advice to the juvenile officer but that he is no longer required or permitted to participate in hearings or proceedings before the juvenile court involving neglected or delinquent children.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,


NORMAN H. ANDERSON
Attorney General