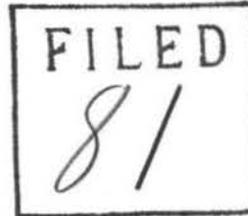


JUVENILE DELINQUENTS: Section 9004, R. S. 1939 does not apply.

March 29, 1943



Honorable Oliver Senti
Associate City Counselor
St. Louis, Missouri

Dear Mr. Senti:

Under date of March 24, 1943, you wrote this office requesting an opinion as follows:

"This Department has been requested to advise the Comptroller whether the State or the City is required to pay the cost of transporting to the Training School at Boonville, boys committed as delinquents when the charge of delinquency is based on an act which is a felony.

This inquiry involves the construction of the statute which should be uniform throughout the State, for which reason we would like to have you rule on the Comptroller's question.

Section 9004 R. S. Mo., 1939, provides:

"In all cases of conviction of felony, wherein the punishment is commitment to the Missouri training school for boys, the cost of the proceedings and of the delivery of such person to the Missouri training school for boys shall be paid by the state; and in all cases of misdemeanor, wherein the punishment if commitment to the Missouri training school for boys, the cost of the proceedings and

of the delivery of such person to the Missouri training school for boys shall be paid by the county in which the conviction is had. The sheriff, marshal or other person charged with the delivery of any person to the Missouri training school for boys shall be allowed the necessary traveling expenses of himself and such person, and a per diem of two dollars for the time actually occupied in taking such person to said Missouri training school for boys and in returning therefrom, to be paid by the state or county, as the case may be."

The statute is silent as to who shall pay the cost of delivering to the School persons who are committed as delinquents. From the words we have underscored, it is clear that the General Assembly intended that the Sheriff or other person charged with this duty should be compensated, and having provided for such compensation, the Legislature must have intended that it should be paid, either by the State or the county.

Where the legislative intent can be ascertained (and it appears from the statute that the Legislature did intend that the person transporting such delinquents should be paid), the courts will read into the statute whatever is necessary to effectuate the legislative intent. The Legislature must have known that boys who have not been convicted, either of a felony or a misdemeanor, were also committed to the School as delinquents under the Juvenile Court Act. Since the case of convictions the cost is allocated according to the nature of the offense, we think it is reasonable to conclude that between the State and the counties it was also intended to allocate the cost of delivering boys committed as delinquents on the same basis;

that is, in the case of those committed as delinquents because of the commission of an act which is a felony, it should be charged to the State, and those committed because of acts not amounting to a felony, it should be charged to the county.

I have suggested to the Comptroller that he continue to deal with these costs as usual until your office construes the statute."

Section 9004 R. S. Mo., 1939, set out in your letter makes provision for paying the costs of transportation to the Missouri training school for boys, persons who have been convicted of offenses under the criminal code of the State. In this connection it is desired to call to your attention the following other sections of the statutes, Section 9700, Article 10, Chapter 56, and Section 8998 of Article 2, Chapter 48.

A conviction under the criminal code is entirely different from an adjudication of juvenile delinquency under the statutes pertaining to Juvenile Delinquents. State ex rel. Matacia v. Buckner, 254 S. W. 179, 1. c. 181:

"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. In *re Sharp*, *supra*, and cases cited; *Com. v. Fisher*, 213 Pa. 48, 62 Atl. 198, 5 Ann. Cas. 92; *State v. Brown*, 50 Minn. 353, 52 N. W. 935, 16 L. R. A. 691,

36 Am. St. Rep. 651; Pugh v. Bowden, 54 Fla. 302, 45 South. 499, 14 Ann. Cas. 816; Ex parte Bowers, 78 Ore., loc. cit. 395; In re Powell, 6 Okl. Cr. loc. cit. 507 et seq., 120 Pac. 1022; Ex parte Januszewski (C. C.) 196 Fed. 123; U. S. ex rel. v. Behrendsohn (D. C.) 197 Fed. 953; Ex parte Bartee, 76 Tex. Cr. R. loc. cit. 287 et seq., 174 S. W. 1051. In this case the alleged criminal act of relator is not set up as a charge of crime and a predicate of punishment under the criminal law but merely as the thing which brings relator within the definition of "delinquent children" in the act, and shows he is within the class over which the state is authorized to exert its power of quasi parental control. Childress v. State, 133 Tenn. loc. cit. 123, 179 S. W. 643. The informations are so drawn. The proceeding is not transformed into a prosecution for crime by the mere adoption of practice in criminal cases as far as applicable under the act. The purpose and substance of the act remain as before. Convenient machinery at hand is borrowed by the act to avoid the necessity of setting up independent machinery of its own."

Also the following brief quotation is taken from the case State ex rel. Shartel v. Trimble et al., 63 S. W.(2nd) 37 1. c. 39:

"Section 14136, R. S. Mo. 1929 (Mo. St. Ann. -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. * * *

The provisions of the statutes relating to delinquent juveniles are found in Article 9 and 10, Chapter 56, R. S. Mo. 1939; Article 9 treats of the procedure in counties having a population of over 50,000 inhabitants and the provisions of this Article apply to the City of St. Louis, Section 9674:

"* * * * For the purpose of this article, the city of St. Louis shall be considered a county within the meaning of this article. In counties where there are or may be more than one circuit judge, the judges of the circuit court in such counties shall designate one of their number, whose duty it shall be to hear and determine all cases coming under this article until there be another judge so designated:* * * *

In the same Article, Section 9676, directing the method of serving the summons and the matters of collecting the costs, contains the following:

"* * * and the cost of the proceedings may, in the discretion of the court, be adjudged against the petitioner, or any person or persons summoned, or appearing as the case may be, and collected as provided by the law in civil cases. All costs not so collected shall be paid by the county.* * * *

A similar provision concerning the payment of costs is found in Section 9703 of Article 10, Chapter 56, which

prescribes the Juvenile procedure in counties having a population of less than fifty thousand (50,000) inhabitants.

The rule of statutory construction mentioned in your letter concerning the supplying of words omitted is recognized. This rule is only applicable in cases where the omissions are apparent and it is necessary in order to carry out the Legislative intent, and may not be used when it may be avoided by any reasonable construction of the statute.

Section 9004, referred to in your letter was first enacted as Section 31 of a law enacted in 1917, Laws of 1917, page 155, for the purpose of revising the laws relating to the penal institutions. Section 9676 supra, was enacted in 1911, Laws of 1911, page 172. The two sections treat of entirely different matters. When what is now Section 9004 was enacted, the law pertaining to the juvenile procedure had been in existence for several years. If the Legislative intention had been to make the provisions of the law concerning the transportation of persons convicted under the criminal code to the Missouri Training School for Boys, apply to persons committed under a civil proceeding, it would have been very easy to do so.

Section 9695, Article 9, Chapter 56, provides as follows:

"Nothing in this article shall be construed to repeal any portion of the law relating to the state industrial home for girls or the Missouri training school for boys; and in all commitments to either of said institutions the law in reference to said institutions shall govern the same."

Under this section in cases involving convictions under the criminal code, the provisions of Section 9004 supra would apply. But as previously pointed out, this provides directions only in cases of convictions under the criminal code and does not make any direction about persons adjudged delinquents.

Hon. Oliver Senti

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March 29, 1943

CONCLUSION

By no stretch of the imagination could the provisions of Section 9004 R. S. Mo. 1939, be construed to make the State liable for the cost of transporting to the Missouri Training School for Boys, a juvenile committed to such institution as a delinquent.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

WOJ/mh