

SHERIFFS: Not authorized to make a charge for attendance on the juvenile court and another charge for attendance on the circuit court on the same day, in the same circuit.

July 28, 1944



Honorable W. C. Huffman
Presiding Judge
Dunklin County Court
Kennett, Missouri

Dear Sir:

We are in receipt of your letter of July 24, 1944, in which you request an opinion of this department. Your letter reads as follows:

"The Sheriff of Dunklin County has presented us with a bill for \$9.00 for waiting on Circuit Court on June 5th and a bill for \$9.00 for waiting on Juvenile Court on the same day.

"Will you kindly advise if the \$18.00 charge is a legal obligation of Dunklin County where Circuit Court and Juvenile Court were held on the same day?

"A. P. Marshall was duly notified to appear as a witness in Circuit Court but failed to appear. The Circuit Court had the Sheriff bring him into court at a cost of \$1.00 fee for serving attachment for witness and \$6.00 mileage.

"The Sheriff's costs were taxed against Dunklin County instead of against the attached witness.

"Will you kindly advise if the \$7.00 sheriff's costs for attaching a witness assessed against Dunklin County by the Circuit Court is a legal obligation of Dunklin County?"

Section 13411, R. S. Missouri, 1939, reads, in part, as follows:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"For attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of such deputies not to exceed three per day \$3.00"

Section 13133, R. S. Missouri, 1939, provides:

"Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

We have previously held that, under the above two sections of the statutes, the sheriff is entitled to \$3.00 per day while actually in attendance on a court of record or criminal court, and that the sheriff may appoint not to exceed three deputies for the performance of these duties, who shall each be entitled to a fee of \$3.00 per day.

The question presented here is whether attendance on the circuit court and the juvenile court constitutes attendance on two courts of record, thereby justifying two charges by the sheriff and his deputies.

The following citation appears in the case of In re Zartman's Adoption, 65 S. W. (2d) 951, l. c. 954:

"One contention of the appellants is that the juvenile court of Jackson County is a court of limited and special powers,

a creature of the statute, and it cannot exercise any powers not specifically given. It is, therefore, argued that, as the statutes, sections 14073 to 14081, R. S. 1929 (Mo. St. Ann. secs. 14073-14081, pp. 822-828), relating to the adoption of children, do not confer on such courts the general power to set aside or annul decrees of adoption, no such power exists. The trouble with this argument is in the false premise that juvenile courts are courts of limited and special powers. On the contrary, such a court is merely a division or branch of the circuit court, a court of general and common-law powers and jurisdiction. The statute, section 14073, specifying what court shall hear and determine cases involving the adoption of children, specifies the juvenile division of the circuit court. The Juvenile Court Act, of which section 14162, R. S. 1929 (Mo. St. Ann. sec. 14162, p. 874), designates the courts which shall have jurisdiction of cases coming within the terms of the act, says that the Cape Girardeau court of common pleas and circuit courts shall have such jurisdiction, and 'may for convenience be called the juvenile court.' Section 14137, R. S. 1929 (Mo. St. Ann. sec. 14137, p. 854), relating to juvenile courts in counties of fifty thousand population or over, is to the same effect, with the further proviso that the circuit judges of such county shall designate one of their number to hear and determine cases coming under such act. There is, therefore, no such thing as a juvenile court, but only a circuit court called by that name for convenience. * * *

In the case of *In re McFarland*, 223 Mo. App. 826, 12 S. W. (2d) 520, l. c. 527, the court stated:

* * * * The so-called 'juvenile court' is but a division of the circuit court and is in fact presided over by the same judge.

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The statute gives to the circuit court original jurisdiction in all matters appertaining to the treatment and correction of delinquent minors, and when acting in that capacity it is called the juvenile court. Section 1136, R. S. Mo. 1919.

"The adoption statute itself refers to 'the juvenile division of the circuit court.' It is then not a separate court, but a division of the circuit court, which certainly has original, general, common-law jurisdiction. * * * "

The above cases constitute ample authority for the statement that the juvenile court is but a division of the circuit court. The sheriff then is making a charge for attendance at two sessions of the circuit court held on the same day, which is in direct conflict with the provision of the statute, quoted above, allowing him or his deputies but \$3.00 per day for such attendance.

We are unable to render an opinion on the question of Dunklin County's liability to pay the costs of attaching a witness because we do not have enough of the facts. You should have stated whether the suit was of a civil or criminal nature -- if criminal, whether the charge was a felony or a misdemeanor, whether the attached witness was on behalf of the State or the defendant, and whether plaintiff or defendant was successful.

CONCLUSION

It is the opinion of this department that the Sheriff of Dunklin County is not authorized to make a charge for at-

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tendance on the juvenile court and a similar charge for attendance on the circuit court on the same day.

Respectfully submitted

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APPROVED:

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