

COUNTY PROBATION OFFICERS:
STATE BOARD OF PROBATION
AND PAROLE:
PAROLE AND PROBATION OF
JUVENILES:
JUVENILE COURTS:
PAROLES:

The State Board of Probation and Parole is neither under a legal duty nor authorized to accept the supervision of a juvenile placed on probation or parole by a juvenile court.



February 5, 1957

Honorable Lewis M. Means
Chairman
Board of Probation and Parole
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Means:

We are in receipt of your letter of January 22 and its enclosures in which letter you have raised the question as to whether or not the State Board of Probation and Parole is responsible in any manner for the acceptance of supervision of a juvenile placed on probation by a magistrate court.

It is noted that the particular parolees with which this question deals are juvenile delinquents as distinguished from parolees convicted of criminal offenses and it might be well to point out that an adjudication of delinquency does not amount to a conviction for a criminal offense. *State v. Rutledge*, 13 SW2d 1061, 321 Mo. 1090. Consequently, even though the magistrate judges have broad powers by virtue of Sections 549.193 and 549.197, Cum. Supp. 1955, in the parole of persons convicted before them for violation of criminal laws, of county ordinances, or of any other offense for which trial may be had before them, the determination of the question presented is dependent upon an interpretation of the statutes in Chapter 211, RSMo 1949; (said chapter dealing with delinquent children and juvenile courts), for it is provided therein (Sections 211.020 and 211.320) that the courts designated as juvenile courts shall have original jurisdiction with respect to juvenile cases, and further, when such cases originate in other courts, they shall be transferred to the court or courts designated as juvenile courts, (Sections 211.060 and 211.350).

After an examination of the sections in Chapter 211, RSMo 1949, it is concluded that the intention of the legislature is that juvenile delinquents placed on parole or probation are to be under the jurisdiction and supervision of the juvenile courts and local probation officers.

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Quoting from an opinion of this office addressed to Mr. W. E. Sears, under date of September 21, 1955:

"Chapters 211 and 219, RSMo 1949, provide a complete scheme for the handling and treatment of delinquent children. Chapter 211 is divided into three parts: That part dealing with delinquent children in counties of classes one and two (Secs. 211.010-211.300, RSMo 1949), that part dealing with delinquent children in counties of classes three and four (Secs. 211.310-211.510, RSMo 1949), and that part generally applicable to all counties (Secs. 211.520-211.540, RSMo 1949).

"Juvenile courts are established for all classes of counties to have jurisdiction over cases brought to have determined the alleged delinquency of a child (Sec. 211.020 and 211.320, RSMo 1949). Provision is also made for the appointment of probation officers in counties of classes one and two (Sec. 211.200, RSMo 1949), and that in counties of class two they shall be known as juvenile officers (Sec. 211.220, RSMo 1949).

"In counties of classes three and four the county court is authorized to appoint a county superintendent of public welfare who shall have all the powers and duties conferred on probation or parole officers (Sec. 205.850, RSMo 1949). If, however, the county court fails to appoint a county superintendent of public welfare, the circuit judge shall designate or appoint a county officer or some other person to serve as probation officer under the direction of the court (Sec. 211.440). However, if there is neither a county superintendent of public welfare nor a probation officer, the sheriff must investigate all cases arising under Sections 211.310-211.510, RSMo 1949, and furnish the court such information and assistance as the judge may require. If a county of class three or four has either a county superintendent of public

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welfare or a probation officer, the sheriff shall serve as assistant probation officer (Sec. 211.455, RSMo, Cum. Supp. 1953).

"In all classes of counties it is the duty of the probation officer to make such investigation of the child as may be required by the court, to be present in court at the hearings, and to furnish to the court such information and assistance as the judge may require, 'and to take charge of any child before and after trial (hearing), as may be directed by the court.' (Secs. 211.200 and 211.460, RSMo 1949.)"

As a further manifestation of the intention of the legislature with respect to the question at hand, it is noted that as to the appointment of juvenile officers in counties of the second class, a competitive examination for such position shall be given by the State Board of Probation and Parole, but that the appointment is made by the juvenile court or the juvenile division of the circuit court and the appointment of the deputies by the juvenile officer is subject to the approval of the circuit court.

It seems unnecessary to discuss each and every one of the sections of Chapter 211, yet it appears noteworthy that the legislature did not, in providing several alternatives for the juvenile court in third and fourth class counties in its handling of a juvenile case, authorize, expressly, the juvenile court to place the juvenile under the supervision of the State Board of Probation and Parole. Section 211.390, RSMo Cum. Supp. 1955. Said section reads in part as follows:

"1. When any child coming under the provisions of Sections 211.310 to 211.510 shall be adjudged to be neglected or delinquent or in need of the care of discipline and protection, the court may make an order committing the child, under such conditions as it may prescribe, to the care of some reputable person of good moral character, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for neglected children, or to any institution incorporated under the laws of this state that may care

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for children, or to any institution or agency which is established by the state or county for the care of children; or the court may place the child in the care and control of a probation officer, and may allow such child to remain in its home subject to the visitation and control of the probation officer, to be returned to the court for further proceedings whenever such action may appear to the court to be necessary; or the court may authorize the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer and the further order of the court; or it may authorize the child to be cared for in some suitable family home in such manner as may be ordered by the court or the court may arrange for proper care through voluntary contributions or otherwise until suitable provision may be made for the child in a home without payment."

From that which has been said and in examining Chapter 211, RSMo 1949, in its entirety, it appears rather clearly that the supervision of juvenile delinquents having been adjudged so by the juvenile courts and placed on parole or probation by said courts is the obligation and duty of the local probation officers, as provided in Chapter 211, supra.

CONCLUSION

It is therefore the opinion of this office that the State Board of Probation and Parole is neither under a legal duty nor authorized to accept the supervision of a juvenile placed on probation or parole by a juvenile court.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Very truly yours,

John M. Dalton
Attorney General