

COUNTY SUPERINTENDENTS:
JUVENILE OFFICERS:

There is no conflict between the duties of the county superintendent of schools and the juvenile officer in connection with the compulsory school attendance of children.



January 22, 1959

Honorable Charles E. Murrell, Jr.
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"There appears to be a conflict in the Statutes as to the duties of the County Superintendent of Schools and the Juvenile Officer under the new Juvenile Code in connection with the compulsory school attendance of children and this office would like to have an opinion defining the duties of the County Superintendent of Schools and the Juvenile Officer in connection with Sections 164.034, 211.031, 211.401 R.S.MO.

"It appears that the County Superintendent of Schools is the attendance officer, that the Juvenile Court is charged with exclusive original jurisdiction in proceedings pertaining to education required by law, and the Juvenile Officer is charged with making investigations, reports, arrests, and performing other duties pertaining in his office, which apparently would also be the duties of the attendance officer."

Numbered paragraph 1 of Section 164.040, RSMo 1949, to which you refer, reads:

"1. The county superintendent of schools in each county shall act as school attendance officer for the county without

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additional compensation for such services. The county superintendent of schools shall have the power of a deputy sheriff in the performance of the duties of school attendance officer in all school districts of the county except as herein provided; provided, that the board of education in school districts organized under the provisions of sections 165.263 to 165.653, RSMo 1949, may appoint and remove at pleasure one or more school attendance officers and shall pay them from the public school funds; and provided further, that, if any board of education in any school district organized under the provisions of sections 165.263 to 165.653, RSMo 1949, does not appoint a school attendance officer, the county superintendent of schools shall act in such district."

A portion of numbered paragraph 2 of this section reads:

"* * * shall have the power to arrest, without warrant, any truant, or non-attendants or other juvenile disorderly persons, and place them in some school, or take them to their homes, or take them to any place of detention provided for neglected children in such county or school district; shall serve in the cases which they prosecute without further fee or compensation than that paid by the board as aforesaid, and shall carry into effect such other regulations as may lawfully be required by the board appointing them."

It will be noted that the above gives the county superintendent of schools the power of a deputy sheriff in the performance of the duties of school attendance officer; that he has the power of arrest without warrant of any truant or non-attendants at schools, or "other juvenile disorderly persons," and to place them in some school or take them to their homes or to any place of detention, provided for neglected children in such county or school district.

In 1957 the Missouri Legislature enacted Chapter 211, RSMo Cum. Supp. 1957, entitled "Neglected and Delinquent

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Children in Juvenile Courts." Section 211.021, Cum. Supp. 1957, of that chapter, reads:

"Definitions.--As used in this chapter, unless the context clearly requires otherwise:

"(1) 'Adult', means a person seventeen years of age or older;

"(2) 'Child', means a person under seven-teen years of age;

"(3) 'Juvenile court', means the Cape Girardeau court of common pleas and the circuit court of each county, except that in the judicial circuits having more than one judge, the term means the juvenile division of the circuit court of the county;

"(4) 'Legal custody', means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living;

"(5) 'Parent' means either a natural parent or a parent by adoption and if the child is illegitimate, 'parent' means the mother."

It will be noted that under the definition in numbered paragraph 4 above of "legal custody" there is contained the provision to provide education to the neglected child.

Section 211.031, RSMo Cum. Supp. 1957, reads, in part:

"Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:

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"(1) Involving any child who may be within the county who is alleged to be in need of care and treatment because:

(a) The parents or other persons legally responsible for the care and support of the child neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child shall not be construed as neglect when the treatment is recognized or permitted under the laws of this state; or * * *."

From the above it will be seen that the juvenile court has jurisdiction where it is alleged that a child is in need of care and treatment because the person having legal custody of such child neglects or refuses to provide education which is required by law.

Section 211.401, RSMo Cum. Supp. 1957, which sets forth the duties of juvenile officers, reads:

"1. The juvenile officer shall, under direction of the juvenile court:

"(1) Make such investigations and furnish the court with such information and assistance as the judge may require;

"(2) Keep a written record of such investigations and submit reports thereon to the judge;

"(3) Take charge of children before and after the hearing as may be directed by the court;

"(4) Perform such other duties and exercise such powers as the judge of the juvenile court may direct.

"2. The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.

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"3. The juvenile officers or other persons acting as such in the several counties of the state shall cooperate with each other in carrying out the purposes and provisions of this chapter."

We believe that the above is a full statement of the situation with regard to the duties of the county superintendent of schools and the juvenile officer with respect to the matters about which you inquire. We do not believe that there is any conflict between these duties.

It is not the function of a juvenile officer to police all of the children in the territory which he serves and to see that they attend school. Broadly speaking, the function of a juvenile officer is to assist the juvenile judge in dealing with those children who are brought before the juvenile court by virtue of their having been arrested for the commission of some offense or because some person has informed the court that they appear to be in need of care and treatment for reasons stated in Section 211.031, RSMo Cum. Supp. 1957, or otherwise are within the purview of the provisions of that section. Until a child is arrested for the commission of an offense or information such as is mentioned in the next preceding sentence is given to the court, the juvenile officer has no functions to perform with respect to such child.

On the other hand, the basic function of a school attendance officer is to see that all children who are required to be in school do attend school. Among other things, a school attendance officer is given the duty to serve notices upon, and file complaints against, parents of children who are required to be in school but fail to attend school; and he is given the power to arrest truants or nonattendants or other juvenile disorderly persons and place them in school or take them to their homes or take them to places of detention provided for neglected children. This provision concerning arrest by a school attendance officer does not conflict with the provision in the juvenile code with respect to children being turned over to a juvenile officer upon arrest because the latter provision relates only to arrests for the commission of offenses and the arrests made by a school attendance officer in the normal performance of his duties will not be of that nature. The law does not place any duty upon a school attendance officer to institute any court proceedings directed at a child (as distinguished from his parents), although, like any other person, he could, if he saw fit, inform the juvenile court that it appeared to him that the child came within the purview of the juvenile code.

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With respect to that small percentage of children who have been brought before the juvenile court, there may be some duplication and overlapping in the powers and duties of the school attendance officers and juvenile officers but that does not mean that there would be any conflict in their powers and duties. It is a very common situation for different law enforcement officers to have the same powers and duties in given situations.

We believe that, in those few instances in which both the juvenile officer and the county superintendent have authority to deal with the same children, both have the power to act, and that the problem is one to be solved by cooperation.

CONCLUSION

It is the opinion of this department that there is no conflict between the duties of the county superintendent of schools and the juvenile officer in connection with the compulsory school attendance of children.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh F. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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