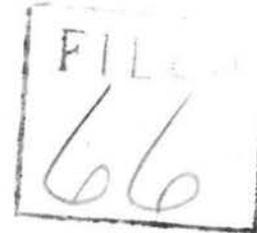


COURTS:

Court may designate any woman to accompany a delinquent girl to State Industrial Home for Girls.

INDUSTRIAL HOME FOR GIRLS:

September 18, 1936.



Hon. Richard R. Nacy,
State Treasurer,
Jefferson City, Missouri.

Dear Sir:

We are in receipt of your letter of August 31st enclosing a letter from Miss Elfa Hamby, Superintendent of Public Welfare, Mt. Vernon, Missouri, and asking this department for an opinion on the questions contained in her letter. Her letter is as follows:

"For some time there seems to have been some argument as to just who should take, or rather who should accompany the delinquent girls from our Juvenile Court to The Girls' Industrial Home at Chillicothe.

"There is no argument in my mind about the matter, I know it has always been lawful and practiced here, that the Probation Officer shall accompany the girls who are subjects for Chillicothe, and have been sentenced there by our Juvenile Judge. In Statutes Vol. 2 Sec. 8374 provides that the Court shall appoint women attendants.

"My commission is under the title Superintendent of Public Welfare, while covers the work as Probation Officer, which may be found under Sec. 14193. And Sec. 14188 states that the Superintendent of Public Welfare shall act as representative of children's bureau.

"In Sec. 14144 we find the facts that the 'Probation Officers are hereby vested with all the power and authority of sheriff --'.

"Our Circuit Court will meet in September, and I now have petitions ready for the

Juvenile Judge. Just who should you make the check to for the transportation, - the Sheriff, or the Probation Officer?"

We construe your question to be this: In counties having a population of less than 50,000 inhabitants, who is entitled under the law to officially accompany to the "State Industrial Home for Girls" such girls as are sentenced to said institution by the Circuit Court, sitting as a Juvenile Court, and what official shall be entitled to receive the fees allowed therefor?

Article 3 of Chapter 44, R. S. Mo. 1929, provides the course to be followed in committing wayward girls to the State Industrial Home for Girls. Section 8364 specifies the classes of those who may be so committed.

Section 8374 thereof provides as follows:

"The circuit court of each county shall appoint women attendants to take to said industrial home for girls all girls committed to said home by the court. The same fees that are now allowed by law for conveying prisoners to the penitentiary shall be allowed to the said women attendants of the several counties of this state for the service of taking to said industrial home such girls as may be committed there, and such fees shall be paid by the state in the same manner as now provided by law in section 11791, chapter 84, R. S. 1929."

Section 14188, R. S. Mo. 1929, provides that the County Superintendent of Public Welfare shall act as local representative of the Children's Bureau of the State Board of Charities and Corrections, and shall perform certain other duties therein enumerated.

Section 14189 provides that said Superintendent shall cooperate with the State Employment Bureaus.

Section 14190 provides that said Superintendent may be deputized by the State Factory Inspector to perform certain duties.

Section 14191, among other things, provides that the Superintendent of Public Welfare and his assistants may be deputized as agents of the State Bureau of Labor Statistics, and invests him with certain other authorities.

Section 14192 provides that upon the request of any board having charge of a public school in any district in the county, said superintendent shall act as attendance officer to enforce the provisions of specified sections, and in such case shall have all the powers and duties of an attendance officer.

Section 14193 is as follows:

"The county superintendent of public welfare shall act as probation officer for his county, without additional compensation."

Section 14194 provides that said superintendent shall be the agent of the county court in his county in investigating all requests for charity and applications of blind persons for pensions.

Chapter 125, Article 8, R. S. Mo. 1929, provides for juvenile courts in counties of less than 50,000 population. Section 14171 thereof provides:

"The circuit judge shall designate or appoint an officer of the county or some other person to serve as probation officer under the direction of the court in cases arising under this article. The court may also designate or appoint one or more persons to act as deputy probation officers."

Section 14172 provides that the appointment of probation officers shall be reported to the State Board of Charities and Corrections, and that such probation officer may be removed for cause by the court, etc.

Section 14173 provides:

"Whenever there is to be a child brought before the court under this law, it shall be the duty of the clerk of said court to so notify the probation officer in advance. It shall be 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 of all cases, 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 hearing, as may be directed by the court. Probation officers shall have all the powers of peace officers anywhere in the state for the purposes of this article."

Section 14171, supra, has been construed by the courts of this state in the case of *In re Poindexter v. Pettis County*, 295 Mo. 629, to the effect that when the county court appoints a county superintendent of public welfare, that person becomes the probation officer of the juvenile division of the circuit court, regardless of the provisions of said Section 14171.

Section 14173, supra, applies to the probation officer regardless of whether he is appointed by the circuit court or by the county court, and Section 14193 expressly says that the county superintendent of public welfare shall act as probation officer of the county, and this last section mentioned was enacted after Section 14171 became a law, and to the extent of inconsistency prevails over Section 14171.

Laws of Missouri, 1931, page 168, Section 14167, relating to treatment and correction of delinquent minors, among other things, provides:

"In case of a delinquent child the court may commit such child, * * * if a girl, to the state industrial home for girls, * * *"

Laws of Missouri, 1933, page 189, Section 14096-a, among other things, states:

"All of the powers and duties heretofore conferred upon and required by law of the State Board of Charities and Corrections with respect to the care, importation, supervision and placing of children, and the Children's Home at Carrollton shall hereafter be exercised and performed by the Board of Managers of State Eleemosynary Institutions until otherwise provided by law. Wherever in any law reference is made to said State Board of Charities and Corrections it shall hereafter be held and construed as the Board of Managers of State Eleemosynary Institutions."

It will be noted that Section 14173 provides that when a child is to be brought before the juvenile court, the clerk of the court shall notify the probation officer in advance, and it places the duty on the probation officer to investigate the child as may be required by the court, and to be present in court at the hearing, and to furnish the court with information and assistance as the judge may require, and further provides that said officer shall "take charge of any child before and after hearing, as may be directed by the court."

It will be further noted that Section 8374, which is a part of the chapter dealing specifically with the State Industrial Home for Girls, empowers the Circuit Court to "appoint women attendants to take to said industrial home for girls all girls committed to said home by the court."

Neither of these sections specifies that the probation officer shall accompany the delinquent child to the State Industrial Home for girls, Section 8374 merely requiring the court to appoint women attendants to take such girl to such industrial home, and Section 14173 leaving to the court the right to designate that the probation officer take such child to such home. In other words, Section 14173 seems to leave it within the discretion of the court to say whether the probation officer shall take the child to said institution, or whether some other person may do so, and absent the direction by the court to the probation officer to so take said delinquent child to such institution, such probation officer would not have authority to take charge of the child and transport it to the institution. Section 8374, while dealing directly with this question and with the State Industrial Home for girls, does not say that the probation officer shall perform these duties. While it would seem that the designation of the probation officer to so transport such child to the State Industrial Home would be an appropriate selection, yet it is not required.

CONCLUSION

It is our opinion that while the Circuit Court may very properly designate the probation officer of a county having a population of less than 50,000 inhabitants as the person to take a delinquent girls to the State Industrial Home for Girls, yet such court is acting within the law to exercise his discretion in designating the person to discharge this duty, except that the person designated must be a woman attendant, and of course the person so designated and performing these duties would be entitled to the fee therefor as provided by the statute, and would be entitled to the same fees that are now allowed by law for conveying prisoners to the penitentiary, such fees to be paid by the State.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN,
(Acting) Attorney General.

DW:HR