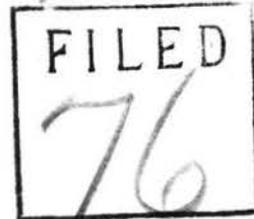


PROBATION OFFICER:

(1a) Social Security Act does not repeal authority of county courts under Section 14182 R.S. Mo. 1929 to appoint county superintendent of public welfare. (1b) County Court may not appoint County Supt. under Sec. 14182 as probation officer only. (2) Circuit Court has no authority to appoint probation officer under Sec. 14171 R.S. Mo. 1929 when County Court appoints county superintendent of public welfare. (3) Circuit Court may with approval of county court pay salary to probation officer under Sec. 14174 R.S. Mo. 1929.

February 8, 1938.

Hon. James S. Rooney  
Judge Circuit Court  
Liberty, Missouri



Dear Judge Rooney:

We wish to acknowledge your request for an opinion under date of January 25, 1938, reading as follows:

"1. Does a county court by authority of Section 14182, R. S. Mo. 1929, have an appointive power of county superintendent of public welfare since the enactment of the State Social Security Commission and designating his work as that of Probation Officer only?

2. By section 14144, R. S. Mo. 1929, does the Circuit Judge have priority of appointive power of County Probation Officer?

3. Does he have the authority to fix the salary such as established by law and such office expenses as necessary and designating the salary and necessary expenses of such office as part of the budget for the Circuit Court in a county of less than 50,000 population?"

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Section 4 of the Laws of Missouri 1937, page 470, relating to the powers and duties of the Social Security Commission, provides in part as follows:

"(4) to cooperate with the United States Children's Bureau in establishing, extending and strengthening child welfare services for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent, and to expend child welfare service funds for payment of part of the cost of district, county or other local child welfare services, and for developing state services for the encouragement and assistance of adequate methods of community child welfare organization, to administer or supervise all child welfare activities, including importation of children, licensing and supervising of child caring agencies and institutions except those conducted by any well known religious order, the operation of state institutions for children, and the supervision of juvenile probation under the direction of but not in derogation of the orders of juvenile courts. All powers and duties of the Commission shall, so far as applicable, apply to the administration of any other Act or state law wherein duties are imposed upon the Commission or the Commission is acting as a state agency."

Section 14182 of Article X, Chapter 125, R. S. Mo. 1929, relates to the appointment by county courts of county superintendents of Public Welfare, as follows:

"The county court in each county may in its discretion appoint a county superintendent of public welfare, and such assistants as it may deem necessary. Whenever the county court of any county has appointed a superintendent of public welfare such officer shall assume all the powers and duties now conferred by law upon the probation or parole officer of such county and shall assume all the powers and duties of the attendance officer in said county and all the powers and the duties of the attendance officer in any incorporated town or village having a population of more than 1,000 inhabitants, and no other or different probation or parole officer or attendance officer or officers shall be appointed by the judge of the juvenile court, by the county superintendent of public schools, or by the school board or any incorporated city, town or village school district or consolidated school district, providing, however, that the provision of this section shall not apply to counties which now have or which shall hereafter have a population of more than 50,000 inhabitants."

Your question is whether the county court still has the appointive power of county superintendent of public welfare under Section 14182 to act as probation officer since the enactment of the State Social Security Act.

In considering whether or not the State Social Security Act, Laws of Missouri 1937, p. 470, is repugnant to Section 14182 R.S. Missouri 1929, we have assumed that the Legislature must have had in mind the latter act at the time the former was passed.

In the case of *State vs. Bader*, 78 S. W. (2) 835, 839, the Supreme Court in speaking of the presumption that the Legislature had in mind a previous act or an act in pari materia, said:

"It is not to be presumed that the same body of men would pass conflicting and incongruous acts. The presumption is that they had in mind the whole subject under consideration; that, whilst the one general subject is touched in several separate acts, yet the legislative intent was that of a harmonious whole. In such case, it is the duty of the courts to so construe all the act in such manner that each and every part thereof may stand, if such construction can be attained, without doing violence to the language used in the several acts."

In the case of *State vs. McCracken*, 95 S. W. (2) (Mo. App.) 1239, 1241, the Court declares the following familiar rule of statutory construction:

"Statutes which are in pari materia should be read and construed together in order to keep all the provisions of the law on the same subject in harmony, so as to work out and accomplish the central idea and intent of the lawmaking branch of our state government, \* \* \* \*"

That the Legislature had in mind the whole subject under consideration is evident from an examination of Section(a) of the State Social Security Act wherein specific reference is made to Article X, Chapter 125, which relates to the appointment of superintendents of public welfare (Laws of Missouri 1937, page 468):

"\*\*\*Sections 14188 and 14194 of Article 10, Chapter 125, Revised Statutes of Missouri 1929, be and the same are hereby repealed \* \* \* \*".

No reference is made to any other section in Article X, Chapter 125 of the R.S. Missouri 1929, and it is therefore evident that the Legislature intended that the Social Security Commission cooperate with existing state and federal agencies in the administration of the various child welfare services, including probation work.

From the foregoing we are of the opinion that the State Social Security Act does not repeal the authority of the county courts under Section 14182 R. S. Missouri 1929 to appoint a county superintendent of public welfare who when appointed assumes all the powers and duties of the probation officer of the county.

Ib.

You raise the further question whether the county court under Section 14182 may appoint a county superintendent of public welfare and designate his work as that of probation officer only.

The statute in unambiguous language declares that when the county court appoints a superintendent of public welfare he assumes all the powers and duties of probation and parole officer of the county and all the powers and duties of the attendance officer. The county court is given no authority to appoint a superintendent of public welfare and designate his work as that of probation officer only. That such was the intention of the legislature is evidenced by Section 14171 R. S. Missouri 1929, which authorizes the Circuit Court to appoint a probation officer as follows:

"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."

From the foregoing we are of the opinion that the county court does not have authority under Section 14182 R.S. Missouri 1929, to appoint a county superintendent of public welfare and designate his work as that of probation officer only.

## II.

Your second question is whether under Section 14144 R.S. Missouri 1929, the Circuit Judge has priority of appointive power of county probation officer.

Section 14144 R. S. Missouri 1929, relates to appointment by the circuit courts of probation officers in counties of fifty thousand inhabitants and over. Your other questions deal with counties of less than fifty thousand inhabitants and we assume you meant to refer to Section 14171 R. S. Missouri 1929, supra, which deals with counties of less than fifty thousand inhabitants.

In the case of Poindexter vs. Pettis County, 246 S.W. 38, the Court said, l. c. 40:

"So as justly contended for by counsel for the appellant, the legal effect of the appointment of White was to automatically suspend the term of office of Poindexter, who was appointed under section 1144 of the Revised Statutes of Missouri 1919, as probation officer. All the duties devolving upon Poindexter as probation officer, by the act of 1921, supra, were transferred to White. State of Washington ex rel. Voris vs. City of Seattle, 74 Wash. 199, 133 Pac. 11, 4 A.L.R. 198; Donaghy vs. Macy, 167 Mass. 178, 45 N.E. 87.2

From the foregoing we are of the opinion that if the county court appoints a county superintendent of public welfare under Section 14182 the superintendent assumes among other powers and duties that of probation officer and the circuit judge would have no authority to appoint a probation officer under Section 14171 R.S. Missouri 1929.

## III.

In reply to your third question we are enclosing copy of an opinion rendered by this Department to Mr. Cecil W. Roberts of Farmington, Missouri, under date of May 23, 1935.

February 8, 1938

The opinion upon the assumption that the county court had not appointed a superintendent of public welfare as provided in Section 14182 R. S. Missouri 1929, reached the following conclusion:

"Therefore, it is the opinion of this department that the county court is authorized to pay the salary of the probation officer out of class 4, Section 2, Budget Law of 1933, and the maximum salary shall not exceed one thousand dollars per annum, as of Section 14174, R. S. Mo. 1929, and shall be of such amount as the circuit court may with the approval of the county court prescribe. Furthermore, such approval of the county court shall be reasonable and not arbitrary.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

MW:MM  
Enclosure.