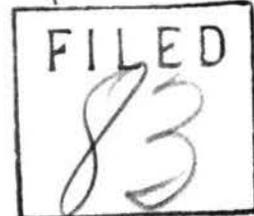


CRIMINAL COSTS: The State is only liable for the costs in juvenile trials on conviction before a jury, plea of guilty, acquittal, or dismissal under the general criminal law, where the punishment is solely imprisonment in the state penitentiary.

September 2, 1938

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of August 9, 1938, requesting an opinion from this department, which is as follows:

"We are often presented with cost bills for payment of items relating to juvenile cases, that is, in cases where the defendant is under the age of seventeen. We receive these bills both from counties of less than 50,000 population, and from counties of 50,000 or more population. In many instances, on account of the age of the defendant and the manner in which the case is handled, it is extremely difficult for us to determine whether or not the state is liable for payment of costs.

"In this connection we are mindful of the fact that Section 3826, R. S. Mo. 1929, provides that 'in all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary, and is sentenced to imprisonment in the county jail, work house or reform school because such person is under the age of 18 years, the State shall pay the costs,

if the defendant shall be unable to pay them, except costs incurred on behalf of the defendant * * *'. Also that Section 3828 R. S. Mo. 1929 provides that 'In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state. * * *'.

"However, in many of these cases the Prosecuting Attorney files an information directly in Circuit Court charging the child with some crime which is punishable solely by imprisonment in the penitentiary, such as burglary and larceny under Section 4056 R. S. Mo. 1929. The child is then taken before the Circuit Judge. No jury trial is held, but various sentences and judgments are pronounced. In some cases the record will show that the 'defendant is found guilty as charged and ordered committed to the Boys' Training School at Boonville for a term of two years'. In others, that the 'defendant is found to be delinquent and guilty as charged and ordered committed to the Boys' Training School at Boonville for a term of two years'. In some cases the defendants are merely 'found guilty of delinquency and ordered committed to the Boys' Training School at Boonville'. In other cases the defendant is 'placed in charge of the Probation Officer'. It is seldom that the juvenile defendant is acquitted or the case against him dismissed.

"We call your attention to Sections 14159 to 14181, inclusive, R. S. Mo. 1929 (juvenile laws in counties of less than 50,000 population), and Sections 14136 to 14158, inclusive, R. S. Mo. 1929 (juvenile laws in counties of 50,000 or more population). Does the fact that the Prosecuting Attorney files a charge which is punishable solely by imprisonment in the penitentiary make the state liable for costs when judgments and sentences are

are rendered as heretofore cited? Would it be necessary for the court records to show that the defendant was being tried under the general criminal statutes instead of as a delinquent in order for the state to be liable for costs? Would a jury trial be necessary under the general criminal statutes or could the trial judge sentence the defendant on evidence submitted?

"We would appreciate your opinion advising us fully in regard to the state's liability for costs in Juvenile Cases. We are enclosing some cost bills in Juvenile Cases for use in preparing your opinion."

In answering your request for this opinion, it will be necessary to divide the subject into three sections. The first section will apply to the juvenile laws in counties of 50,000 or more population, which are set out in Sections 14136 to 14158, inclusive, R. S. Mo. 1929, and the different Session Laws. The second section of this opinion will apply to counties of 50,000 population or less and will be governed by Sections 14159 to 14181, R. S. Mo. 1929, and the separate Session Laws. The third section of this opinion will be governed by the separate sections of the statutes applying to both counties of more than 50,000 population and counties of less than 50,000 population.

I.

AUTHORITIES APPLYING TO THE JUVENILE LAWS
IN COUNTIES OF OVER 50,000 POPULATION.

Section 14136, R. S. Mo. 1929, applying to delinquency of children under the age of seventeen years of age, reads as follows:

" * * * Provided, that when jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of this article, until the child shall have attained its majority; but nothing in this article shall prevent the juvenile court from inflicting a punishment which shall extend beyond the age of majority in cases where the delinquent shall be convicted of a crime, the punishment of which under the statutes of this state, when committed by persons over the age of eighteen years, is death or imprisonment in the penitentiary for a term of not less than ten years.
* * *."

Section 14137, R. S. Mo. 1929, applying to counties of a population of 50,000 or over, as to the jurisdiction of the different courts, reads as follows:

"The circuit courts exercising jurisdiction in counties now or hereafter having a population of fifty thousand (50,000) inhabitants or more shall have original jurisdiction of all cases coming within the terms of this article: Provided, that in counties containing a city of the first class the criminal court shall have such original jurisdiction. For the purpose of this article, the city of St. Louis shall be considered a county within the meaning of this article. In counties where there are or may be more than one circuit judge, the judges of the circuit court in such counties shall designate one of their number, whose duty it shall be to hear and determine all cases coming under this article until there be another judge so designated: Provided, that in case of the absence or inability of the judge designated to hold said court, any one of said judges may perform that duty, and: Provided, that in counties in which

the criminal court has jurisdiction, the judge of the criminal court may, in case of his absence from the county or of sickness, call in any circuit judge of the judicial circuit in which such county is located and if the judge so called in, consent to act, said circuit judge shall during such absence or sickness have the same powers and perform the same duties as are imposed upon the judge of the criminal court under this article. * * * The clerk of the circuit court in such county shall act as the clerk of the juvenile court. The practice and procedure prescribed by law for the conduct of criminal cases shall govern in all proceedings under this article in which the child stands charged with the violation of the criminal statutes of the state and in such proceedings the child, his parent, or any person standing in loco parentis to him may on his behalf demand a trial by jury. In all other cases the trial shall be before the court without a jury, and the practice and procedure customary in proceedings in equity shall govern except where otherwise provided by this article."

When a person is charged with a criminal offense, the prosecutor must file an information or indictment, and the provisions of Section 22, Article II, of the Constitution of Missouri are applicable. This was so held in the case of State ex rel. v. Tincher, 258 Mo. 1, 166 S. W. 1028. This case also holds that a criminal prosecution under the Juvenile Act should comply with the general criminal laws of the state such as juries and the filing of an information.

Section 14139, R. S. Mo. 1929, in providing for the payment of the costs in the hearing of the delinquency of a child, reads as follows:

" * * * On the return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear the case in a summary manner, and if it shall determine that the child is a 'neglected child' within the definition

thereof contained herein, shall enter its order or judgment accordingly under the provisions of this article; and the cost of the proceedings may, in the discretion of the court, be adjudged against the petitioner, or any person or persons summoned, or appearing as the case may be, and collected as provided by the law in civil cases. All costs not so collected shall be paid by the county. * * *."

Section 14138, R. S. Mo. 1929, reads as follows:

"Any reputable person, being a resident of the county, having knowledge or information of a child, who appears to be a neglected child, may file with the clerk of the juvenile court a petition, in writing, setting forth the facts, verified by affidavit. It shall be sufficient that the affidavit be on information and belief.

Section 14138, supra, applies to counties of over 50,000 population and is duplicated by Section 14164, R. S. Mo. 1929, which applies to counties under 50,000 population.

Section 14141, R. S. Mo. 1929, in regard to the trial of a child under the age of seventeen years in the juvenile court, reads as follows:

"When in any such county a child under the age of seventeen (17) years is arrested with or without warrant, such child shall, instead of being taken for trial before a justice of the peace, or police magistrate, or judge of any other court now or hereafter having jurisdiction of the offense charged, be taken directly before such juvenile court; or if the child shall have been taken before a justice of the peace or a police magistrate or judge of such other court, it shall be the duty of said justice or police magistrate or judge to transfer the case to such juvenile court,

and of the officer having the child in charge to take such child before said court, and the said court shall proceed to hear the case in accordance with the law for the trials of such offenses."

Under Section 14141, supra, and under the holding in the case of State v. Rutledge, 13 S. W. (2d) 1061, 1. c. 1066, in counties over 50,000 population, only the juvenile court can try juveniles. In that case the court said:

"When a delinquent child is brought before a juvenile court charged with the violation of a criminal statute, the judge of that court must determine in the first instance whether such child shall be proceeded against as a delinquent, or prosecuted under the criminal law. If the child is then under 17 years of age, the further proceeding, whichever it may be, must be had in his court; if the child is then 17 years of age or over, the judge may, if he determines that the child should be prosecuted under the general law, either direct the trial to proceed in his own court, or order the cause transferred to a court having general criminal jurisdiction. When a child who has passed his seventeenth birthday is brought before a court of general criminal jurisdiction, charged with having committed a criminal offense while under 17 years of age, that court may determine whether he should be dealt with as a delinquent, or prosecuted under the general law, and, if it decides that he should be proceeded against as a delinquent, order the cause transferred to the juvenile court. But a court of general criminal jurisdiction is wholly without jurisdiction in cases in which a child under 17 years of age is charged with the violation of criminal law; without jurisdiction to even determine which course should be pursued with respect to such child."

Section 14151, R. S. Mo. 1929, which gives the juvenile court the authority to commit delinquents to certain institutions, reads as follows:

"In the case of a delinquent child, the court may suspend the sentence or execution thereof from time to time, and may in the meantime commit the child to the care and control of a probation officer duly appointed by the court, and may allow such child to remain in its home subject to the visitation and control of the probation officer, such child to report to the probation officer as often as may be required, and to be subject to be returned to the court for further proceedings whenever such action may appear to the court to be necessary; * * * the court may commit the child, if a boy, to the Missouri training school for boys, or, if a girl, to the state industrial school for girls; or the court may commit the child to any institution within the county, incorporated under the laws of this state, that may care for children, or to any institution which now or hereafter may be established by the state or county for the care of boys or girls, or to any special truant or parental school which now or hereafter may be established by the board of education of said county."

Under this Section 14151, and in the case of State v. Buckner, 254 S. W. 179, it was held that the charge and conviction on a charge of delinquency is not a criminal proceeding.

II.

AUTHORITIES APPLYING TO THE JUVENILE LAWS
IN COUNTIES UNDER 50,000 POPULATION.

Section 8357, R. S. Mo. 1929, applies to counties under 50,000 population. This section, with reference to the commitment to a reformatory and the cost of the proceedings and the delivery of such person to the reformatory, reads as follows:

"In all cases of conviction of felony, wherein the punishment is commitment to the reformatory, the cost of the proceedings and of the delivery of such person to the reformatory shall be paid by the state; and in all cases of misdemeanor, wherein the punishment is commitment to the reformatory, the cost of the proceedings and of the delivery of such person to the reformatory shall be paid by the county in which the conviction is had."

Section 14161, R. S. Mo. 1929, reads as follows:

"This article shall apply to children under the age of seventeen years, in counties of less than 50,000 population, who are not now or hereafter inmates of any state institution or any institution incorporated under the laws of the state for the care and correction of delinquent children. When jurisdiction has been acquired under the provisions hereof over the person of a child, such jurisdiction shall continue, for the purpose of this article, until the child shall have attained the age of 21 years. * * *"

Section 14162, R. S. Mo. 1929, reads as follows:

"The Cape Girardeau court of common pleas and all circuit courts in counties less

then 50,000 population shall have original jurisdiction of all cases coming within the terms of this article. The proceedings of the court in such cases shall be entered in a book or books kept for that purpose, and known as the juvenile records, and the court shall be known as the Cape Girardeau court of common pleas and the circuit court, and may for convenience be called the juvenile court. The clerk of the Cape Girardeau court of common pleas and the clerk of the circuit court in such counties, shall act as the clerk of the juvenile court. In cases of the absence or inability of the circuit judge to hold said court, he may call in any other circuit judge to perform that duty. In cases arising under this article, the hearing shall be before the court without a jury, and the practice and procedure customary in proceedings in equity shall govern: Provided, that the child shall be given a trial by jury, as now provided in the juvenile court act pertaining to counties of over 50,000 inhabitants, when demanded by the child, its parents or guardian. In the discretion of the judge of the Cape Girardeau court of common pleas and of the circuit court any petition alleging a child to be delinquent may be dismissed and such child prosecuted under the general law when, in the judgment of such judge, such child is not a proper subject to be dealt with under the reformatory provisions of this article."

Section 14164, R. S. Mo. 1929, which applies to counties under 50,000 population, is the same section as Section 14138, supra, which applies to counties over the population of 50,000.

Under Section 14166, as amended and set out in Session Laws, 1931, page 168, the county is liable for the costs of a hearing on a delinquency charge, and not the state. This section, in part, reads as follows:

"Upon the return of the summons, or at the time set for the hearing, the court shall proceed to hear the case in a summary manner and may conduct the examination of the witnesses without the assistance of counsel, and may take testimony and inquire into the habits, surroundings, condition and tendencies of said child, to enable the court to render such order of judgment as shall best conserve the welfare of said child and carry out the objects of this article and the court, if satisfied that the child is in need of the care or discipline and protection of the state, may so adjudicate, and may in addition find said child to be delinquent or neglected, or in need of more suitable guardianship, as the case may be. * * * * The cost of the proceedings may in the discretion of the court be adjudged against the petitioner, or any person or persons summoned or appearing, as the case may be, and collected, as provided by law. All costs not so collected shall be paid by the county. * * * *"

Section 14168, R. S. Mo. 1929, reads as follows:

"When in any such county a child under the age of seventeen years is arrested with or without warrant, such child shall, instead of being taken for trial before a justice of the peace, or police magistrate, or judge of any other court now or hereafter having jurisdiction of the offense charged, be taken direct before the circuit court; or if the child shall have been taken before a justice of the peace or a police magistrate or judge of such other court, it shall be the duty of said justice or police magistrate or judge to transfer the case to the circuit court, and of the officer having the child in charge to take such child before said court, and the said court shall proceed to hear the case. Nothing in this article contained shall be construed as depriving any court or

magistrate of such counties of the powers now given them by the law to file complaints and issue warrants, but all subsequent proceedings shall be had in the circuit court. The circuit court shall proceed to hear and dispose of such cases in the same manner as if the proceedings had been instituted in said circuit court upon petition, as hereinbefore provided."

Section 14178, R. S. Mo. 1929, reads as follows:

"Nothing in this article shall be construed to repeal any portion of the law relating to the state industrial home for girls or the Missouri reformatory; and in all commitments to either of said institutions the law in reference to said institutions shall govern the same."

This section, being a part of Article 9, Chapter 125, R. S. Mo. 1929, does not repeal the law relating to the industrial school for girls or the Missouri reformatory.

In any county, in the discretion of the judge, any petition of delinquency may be dismissed and the child prosecuted under the general law. This authority is granted under Section 14163, R. S. Mo. 1929, which reads as follows:

"In the discretion of the judge of any court having jurisdiction of delinquent children under the provisions of articles 8 or 9, chapter 125, R. S. 1929, any petition alleging a child to be delinquent may be dismissed and such child prosecuted under the general law, and any motion, petition or application, made to any court or judge having general jurisdiction of criminal causes, to transfer the case of or charge against any delinquent child to a court having jurisdiction of delinquent children under the provisions of said articles 8 and 9, may be denied in the

discretion of the judge, when in the judgment of the judge such child is not a proper subject to be dealt with under the reformatory provisions of either said article 8 or said article 9."

This section is upheld in the case of *Ex Parte Bass*, 40 S. W. (2d) 457, 1. c. 458, where the court said:

"2. All hearings by the court after the entry of the order and direction that the proceedings be had under the general criminal laws of the state were without jurisdiction and null and void because no indictment was ever returned under article 2, section 12 of the Constitution and the general criminal laws of the State of Missouri, to clothe said Juvenile Court with further jurisdiction as to the subject matter and the person of the defendant and no information was filed by the prosecuting attorney of Greene County, Missouri, in compliance with article 2, section 12 of the Constitution and the general criminal laws of the State of Missouri, and the information signed and verified by J. Will Webb, Chief Probation Officer, filed in the Juvenile Court and thereafter dismissed by said court is void for the reason that it does not comply with article 2, section 12 of the Constitution and with the general criminal laws of the State of Missouri, and under the procedure of the general criminal laws of the State of Missouri, is wholly void and fails to clothe the court with jurisdiction over the subject matter and the person of the defendant to hear and try said cause.'

* * * * *

"However, under our later controlling decision in *State ex rel. v. Walker*, 34 S. W. (2d) 124, a juvenile court's jurisdiction in such a case ceases upon its determination and direction that the de-

fendant shall be proceeded against, not as a delinquent, but under the general criminal law. It follows that the commitment issued in this case by the juvenile court of Greene county, by virtue and authority of which the warden of the state penitentiary holds petitioner, is void."

Section 8350, as amended and set out in Session Laws, 1933, page 331, reads as follows:

"Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri Training School for Boys; and any boy under the age of seventeen years convicted of any other felony, either upon plea of guilty or upon trial, may be committed to the Missouri Training School for Boys. * * *"

Section 14163, supra, is not in conflict with Section 8350, Session Laws, 1933, page 331, and it was so held in the case of State ex rel. v. Rutledge, 13 S. W. (2d) 1061, which decided as follows:

"This section, applying to all counties, harmonizes the two juvenile court laws as to the matter of the discretion of the judge in transferring cases from the circuit to the juvenile court, which distinction was noted in State v. Gregori, 318 Mo. 998, 2 S. W. (2d) 747.

"Sec. 8350 is not in conflict with this section, but both can stand. The juvenile

court has exclusive jurisdiction to try children under 17 years of age and may try other minors, who have passed that age since the commission of the offense. Discretion of the judge of a court of general criminal jurisdiction to refuse to transfer a criminal charge against a minor to juvenile court, is limited to proceedings commenced against children after they have reached the age of 17 years. If the child, when brought into juvenile court, is under 17 years of age, the judge must determine whether such child be proceeded against as a delinquent, or prosecuted under the criminal law. In such cases, all further proceedings must be in that court. If the child is then 17 years of age or over, the judge may direct the trial to proceed in his court or transfer it to a court having general criminal jurisdiction. When a minor who has passed his 17th birthday is brought before a court having general criminal jurisdiction, charged with an offense committed while under 17 years of age, that court may determine whether he should be dealt with as a delinquent or prosecuted under the general law and if he decides that such minor should be proceeded against as a delinquent, order the cause transferred to the juvenile court. If such child be under 17 years of age, the judge of the general criminal court is without jurisdiction to do anything further than transfer the cause to the juvenile court. The discretion conferred by the section can be exercised only once and the decision of the judge first having to pass on the question is final. This discretion does not deny equal protection of the law, nor make an arbitrary classification in violation of the constitution. *State ex rel. v. Rutledge*, 13 S. W. (2d) 1061."

III.

AUTHORITIES APPLYING TO THE JUVENILE LAWS
IN BOTH COUNTIES OVER AND UNDER 50,000
POPULATION.

Section 3844, R. S. Mo. 1929, which refers to the certification of fee bills to the State Auditor, reads as follows:

"When a fee bill shall be certified to the state auditor for payment, the certificate of the judge and prosecuting attorney shall contain a statement of the following facts: That they have strictly examined the bill of costs; that the defendant was convicted or acquitted, and if convicted, the nature and extent of punishment assessed, or the cause continued generally, as the case may be; that the offense charged is a capital one, or punishable solely by imprisonment in the penitentiary, as the case may be; * * *."

Section 3826, R. S. Mo. 1929, which provides when the state shall pay the costs in all criminal cases, reads as follows:

"In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary, and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except costs incurred on behalf of defendant. * * *"

Section 3828, R. S. Mo. 1929, which provides for the costs in case of acquittal, reads as follows:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; * * *"

Under this Section 3828, a dismissal has been held the same as an acquittal.

In your request you ask if it is compulsory to try a juvenile, under the criminal law, in the juvenile court or the circuit court. Section 3662, R. S. Mo. 1929, in reference to that question, reads as follows:

"All issues of fact in any criminal cause shall be tried by a jury to be selected, summoned and returned in a manner prescribed by law."

And can only be waived as set out in Section 3663, R. S. Mo. 1929, which applies to misdemeanors only.

In the case of State v. Talken, 316 Mo. 596, 292 S. W. 32, l. c. 33, the court said:

"So much of section 28, article 2, of the Missouri Constitution, as is germane to the question involved, is as follows:

"'The right of trial by jury, as heretofore enjoyed, shall remain inviolate.'

"Section 4005, R. S. Mo. 1919, reads:

"'All issues of fact in any criminal cause shall be tried by a jury, to be selected, summoned and returned in a manner prescribed by law.'

"Section 4006, R. S. 1919, reads:

"'But the defendant and prosecuting attorney, with the assent of the court, may

submit the trial of misdemeanors to the court, whose finding in all such offenses shall have the force and effect of the verdict of a jury.'

"Conceding, as we later find, that the offense of which defendant stands convicted is a felony, the waiver of a jury constitutes a violation of defendant's rights to which he may not assent. The right to be tried by jury in felony cases is a sacred right, heretofore enjoyed and guaranteed by the Constitution, to the waiving of which he may not give assent, for the reason found, among others, in State v. Mansfield, 41 Mo. 470, loc. cit. 478, 'the prisoner is not in a condition to exercise a free and independent choice without often creating prejudice against him.' The waiver of the jury and the trial of the cause before the court sitting as a jury constitute error. Neales v. State, 10 Mo. 498; State v. Moody, 24 Mo. 560; State v. Meyers, 68 Mo. 266; State v. Sanders (Mo. Sup.) 243 S. W. 771."

Sections 4005 and 4006, R. S. Mo. 1919, as mentioned in the above case, are now Sections 3662 and 3663, respectively, of the Revised Statutes of Missouri, 1929.

In view of the holding in the above case, it goes without saying that a conviction as certified in the fee bill by the judge and prosecuting attorney to the state auditor, in compliance with Section 3844, supra, is that the defendant was convicted by a jury.

Under Section 3844, supra, the certificate must show "that the defendant was convicted or acquitted, and if convicted, the nature and extent of punishment assessed, or the cause continued generally," and further states "that the offense charged is a capital one, or punishable solely by imprisonment in the penitentiary."

This Section 3844 must be strictly construed, and the certification must show a conviction, plea of guilty, or acquittal in order that the state be liable for the costs. It was said in Ring v. Paint and Glass Co., 46 Mo. App. 1. c. 377:

"It may be stated that the entire subject of costs in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other person claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation."

And also in the case of State ex rel. v. Wilder, 197 Mo. 1. c. 32, the court said:

"For many years this court, in obedience to strict statutory provisions, has sedulously maintained that no costs can be taxed except such as the law in terms allows. Shed v. Railroad, 67 Mo. 687; Williams v. Chariton, 85 Mo. 646."

CONCLUSION

Under the above authorities, it is the opinion of this department that where a juvenile is tried for delinquency, the costs must be paid by the county. In the case of a trial of a juvenile under the general criminal law for an offense punishable solely by imprisonment in the penitentiary, or punishable as a capital offense, the juvenile must be tried by a jury and the costs must be paid by the state. It is further the opinion of this department that, under the above authorities, the state would be liable for the costs where the juvenile pleads guilty, or the charge is dismissed by the state, when the offense charged is punishable as a capital case or solely by imprisonment in the penitentiary. Under the above authorities, the court may commute the sentence, after conviction by a verdict of imprisonment in the penitentiary, to either the Intermediate Reformatory, under the limitations prescribed in that Act, or he may commute the sentence by ordering the juvenile sent to the Industrial School for Girls or the Boys' Reformatory. This commutation of sentence does not affect the payment of the costs by the state for the reason that, as far as the state is concerned, the case against the

juvenile is disposed of at the time of the conviction and sentence under the terms of the verdict brought in by the jury.

It is further the opinion of this department that in order to receive payment of the fee bills in cases as above described, the fee bill should affirmatively show that the cause was tried under the general criminal laws either by a jury, a plea of guilty, acquittal, or dismissal. A dismissal is the same as an acquittal.

It is further the opinion of this department that under Section 14141, supra, applying to counties over 50,000, and Section 14163, supra, applying to counties under 50,000, the judge may dismiss the petition of delinquency and try the juvenile under the criminal law. This dismissal of the petition on a charge of delinquency is the same as an acquittal on that charge, and the county, up to the time of the dismissal, would be liable for the costs under Section 14166, Session Laws of Missouri, 1931, page 168, supra. If the criminal charge was originally filed in the circuit court either by way of a preliminary or a grand jury indictment, and it was later ascertained that the defendant was a juvenile and should be tried under the delinquency act and not under the general criminal laws, then the state would be liable for the costs up until the time the cause was transferred to the juvenile court for the trial of the juvenile on delinquency. After the case is transferred the county would be liable for the further costs accrued in the trial on delinquency, in accordance with Section 14166, Session Laws of Missouri, 1931, page 168, supra.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:HR