

PROBATION OFFICERS: - Probation officers have authority to go to any portion of the State under order of the court and to be reimbursed for necessary expenses in so doing, so long as the total sum of expenses does not exceed \$200.00 for any one year.

(COUNTIES OVER 90,000.)

October 3, 1941

11/26
Hon. Guy D. Kirby
Judge of Division No. 1
Greene County
Springfield, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated September 27, 1941, which reads as follows:

"This will remind you that I had a conversation with Mr. Creech in your office last Wednesday and asked for an opinion about a matter of this kind:

"Suppose there is a child, under 17 years of age, under the jurisdiction of the Juvenile Court; a neglected child only, not a delinquent or a criminal.

"By order of the Court the child is placed in a children's home, privately owned and controlled, in St. Louis, for an indefinite stay until further order of the Court.

"After a stay there, the Court in the exercise of its jurisdiction orders the child released from that institution and brought back to Springfield; to be placed in an institution here or turned over to its parents. The Court makes such order and orders the Probation Officer to go and get the child and return it; still retaining jurisdiction.

"Would the expenses of the Probation Officer in going and coming pursuant to this order be properly taxed against the County?"

"You perhaps remember that I discussed this question with you Wednesday and your offhand verbal opinion was that it would be a proper charge. I would appreciate the satisfaction of a written opinion from you to that effect.

"There is no controversy, but your opinion will enable us to proceed hereafter with the assurance that we are within the law."

Section 9681 R. S. Missouri, 1939, reads as follows:

"The circuit court or the criminal court where constituted as a juvenile court under this article shall appoint a discreet person of good character, not under the age of twenty-five years, to serve as probation officer during the pleasure of the court. Whenever there is to be a child brought before the juvenile court, it shall be the duty of the clerk of said court, if practicable, to notify the probation officer in advance of that fact. 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 in order to represent the interests of the child when the case is heard, 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, as may be directed by the court. Probation officers

are hereby vested with all the power and authority of sheriffs to make arrests and perform other duties incident to their office. The juvenile court shall have power to make rules specifying the duties of the probation officers in any and all cases. * * "

Section 9683 R. S. Missouri, 1939, provides as follows:

"Salaries of probation officers, deputies, clerks and stenographers. -
* * * * not exceeding twelve hundred dollars per annum in counties of 90,000, and less than 200,000 inhabitants; * * the circuit court or the criminal court when constituted as a juvenile court under this article, may appoint necessary clerks and stenographers who shall receive a salary of not less than twelve hundred nor more than fifteen hundred dollars per annum. * * * * *
Actual disbursements for necessary expense, exclusive of office expenses, made by probation officers while in the performance of their duties, shall be reimbursed to them out of the county funds after approval by the judge of the juvenile court; but no officer shall be allowed for such disbursements a greater sum than two hundred dollars in any one year. * * * * *"

We take notice that Greene County has a population in excess of 90,000, for the purpose of this opinion.

Section 9687 R. S. Missouri, 1939, provides as follows:

"Any probation officer may, without warrant or other process, at any time until final disposition of the case of any child over whom said juvenile court shall have acquired jurisdiction, take any child placed in his care by said court, and bring such child before the court, or the court may issue a warrant for the arrest of any such child; and the court may thereupon proceed to make any lawful disposition of the case."

Section 9689 R. S. Missouri, 1939, reads as follows:

"In any case where the court shall commit a child to the care of any association or individual in accordance with the provisions of this article, the child shall, unless otherwise ordered, be subject to the control of the association or individual to whose care it is committed, but subject to the order of the court in committing such child and to any further order made by the court. When any child shall be found to be neglected or delinquent within the meaning of this article, and when such is also found to be feeble-minded or epileptic, the juvenile court may make an order committing such child to the Missouri state school, under such conditions as the court may prescribe, conformable to the laws governing said institution."

In the case of Hastings v. Jasper County 314 Mo. 144, 1. c. 150, the Court had this to say:

"Probation officers are appointed by the circuit judge sitting as a juvenile court by reason of authority vested in such officer by statute, not for a specified term of years, but until and subject to removal in a lawful manner. After appointment and qualification certain duties and powers are conferred by statute as have heretofore been stated. (Chap. 21, Art. VI, R.S. 1919.)

"The right, authority and duty are created by statute; he is invested with some portion of the sovereign functions of the government to be exercised for the benefit of the public and is consequently a public officer within the definition given by this court.

"Nor can it be said that probation officers are state officers. * *

* * * *

"Our conclusion, from the foregoing, is that probation officers are public officers whose duties are created by law, are to be wholly performed within the limits of a county and for the benefit of the people of that county and whose salaries are paid by the county courts from the funds of such counties, and appellant is therefore a county officer * * * * "

It will be noted from reading Section 9681, supra, that the probation officer is appointed by the Circuit Court or the Criminal Court, where constituted as a judicial Court and in Section 9683, supra, it will be

particularly noted that the actual disbursements for necessary expenses, exclusive of office expenses, made by a probation officer while in the performance of his duties shall be reimbursed out of the county funds after approval by the Judge of the Juvenile Court, but no officer shall be allowed for such disbursements, a greater sum than Two Hundred (\$200.00) Dollars for any one year. No doubt the legislature intended that the probation officer should be under the control and supervision of the Circuit Court or Criminal Court through his appointment, by virtue of Section 9681, supra, and said officer should have the further duties and authorities cast upon him by Section 9687, supra. It will be particularly noted in Section 9689, supra, that the Court shall retain control of the child, even though said child be committed to some association or individual.

In the opinion request the specific question was asked: Would the expenses of the probation officer, in going and coming, pursuant to an order of the Court, be properly taxed against the County? In this particular, we call attention to the case of *Bowers v. Missouri Mutual Association*, 62 S. W. (2d) 1058, 1. c. 1063, where the Court said:

" * * * Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible as to further those ends and avoid giving them an unreasonable effect. *Gist v. Rackliffe-Gibson Constr. Co.*, 224 Mo. 369, 384, 123 S. W. 921. In arriving at the legislative intent, doubtful words of a statute may be enlarged or restricted in their meaning to conform to the intent of the lawmakers, when manifested by the aid of sound principles of interpretation. *Straughan v. Meyers*, supra, 268 Mo. loc. cit. 588, 187 S. W. 1159; *City of St. Louis v. Christian Brothers College*, 257 Mo. 541, 552, 165 S. W. 1057; *State to Use, etc., v. Heman*, 70 Mo. 441, 451. And it has been said that 'while we have no right to construe a law by our view of its expediency, we can take that

feature into consideration in attempting to ascertain what was in the legislative mind.' State ex rel. Asotsky et al. v. Regan, 317 Mo. 1216, 1224, 298 S. W. 747, 749, 55 A. L. R. 773."

From this latter case, we have quoted general propositions of law which are applicable in the construction of statutes and we are of the opinion that the legislature undoubtedly intended that the probation officer would have the right to go to any part of the State of Missouri, under order of the Court and bring before the Court children who might be proper subjects for the supervision of the Juvenile Judge and as was stated in the Hastings case, supra, the probation officer has state-wide authority. When applying the language of the portion of Section 9683, supra, we think the legislature clearly gives the probation officer the right to be reimbursed for any disbursement necessary for expenses incurred in carrying out his duty. Of course, subject to the approval by the Judge of the Juvenile Court. Provided, however, that such disbursements do not exceed a greater sum than \$200.00 in any one year.

CONCLUSION

We are of the opinion that a probation officer has the right when acting under the order of a Juvenile Judge, to go to any part of the State and either take or bring before the Court a juvenile and to be reimbursed for his expenses in so doing, providing such expenses do not exceed a greater sum than \$200.00 for any one year, in counties over fifty thousand.

Respectfully submitted

APPROVED:

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