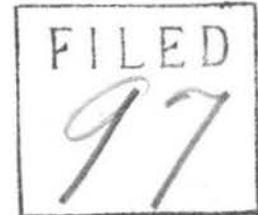


DELINQUENT CHILDREN: 1) Section 9703, R. S. Mo. 1939, construed concerning judge's authority to tax costs. Against whom.  
2) When costs are to be paid by the County Court pursuant to Sec. 9703, R.S.Mo. 1939, Circuit Clk. shall follow same procedure in the collection thereof as used in the collection of criminal costs.

October 29, 1943



Honorable Max R. Wiley  
Prosecuting Attorney  
DeKalb County  
Maysville, Missouri

Dear Sir:

We are in receipt of your opinion request of October 26, which request reads as follows:

"I am requesting an opinion from your office in regard to costs in Juvenile Court. I find that Section 9703 Revised Statutes of Missouri 1939 provides that costs may be assessed against the petitioner, prosecuting witness or others interested in the case. It further provides that if the costs are not collected from these sources that they may be collected from the county.

"I am asking your office for an opinion as to whether a regular cost bill made out by the Circuit Clerk and approved by the Circuit Judge and Prosecuting Attorney should not be paid by the County Court when properly made out and presented to them.

"I do not think that it is fair for the costs to be assessed against the petitioner or others. Juvenile Delinquency is on the increase in the country districts as well as the cities and they should be taken care of, but you cannot expect officers not on a salary to assist in investigations and other duties preparatory to bringing the juveniles into court."

We presume that in this request you intend to ask two questions mainly:

1) Does the judge in a proceeding held in accordance with Section 9703, R. S. Mo. 1939, have a right to adjudge the costs against the county or must he in every case adjudge the costs against

some individual, petitioner or otherwise.

2) What sections of the Statutes govern the method of collecting costs if the county is obligated to pay.

First in considering question one, we quote the pertinent part of Section 9703, Supra, controlling this opinion which reads as follows:

"\* \* \*The hearings may be conducted in the judge's chambers or in such other room or apartment as may be provided for such cases, and as far as practicable such cases shall not be heard in conjunction with the other business of the court. 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. \* \* \*"

It will be noted from the reading of the aforesaid portion of said section that it is provided:

"\* \* \*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, \* \* \*"

In 25 R.C.L. at page 768, we find this general principle of authority construction laid down:

"The word 'may' must be understood to have been used in a permissive sense where it is expressly coupled with the word 'discretion' in such a way as to negative the possibility of its use in a mandatory sense."

(Valentine's Law Dictionary, p. 804.)

Therefore, we must conclude that the legislature intended when they used the words "may in the discretion of the courts" that the trial judge if he saw fit could adjudge that the petitioner or any person or persons summoned or appearing in the hearing before him should pay the costs of such

hearing. We shall next consider what provision is made in the section in a situation where the trial judge did not in his discretion adjudge the costs. Turning to the section we find this sentence:

"All costs not so collected shall be paid by the county."

It is significant to note that the sentence starts "all costs" and further, there is contained in the sentence the word "shall" whereas in the first quoted part of the section which we have just referred to, the legislature used the words "may in the discretion of the courts". Turning to the definition of the word "shall" we quote from the Case of State ex rel. McKittrick, Attorney-General vs. Wymore, 119 S. W. (2d), page 941, l.c. 944, paragraph 7:

"\* \* \*On reading the article it will be noted that the words 'may' and 'shall' are used many times in the several sections. They were used advisedly and must be given their usual and ordinary meaning. It is the general rule that in statutes the word 'may' is permissive only, and word 'shall' is mandatory.\* \* \*"

From the reading of the case supra; together with the definition quoted from 25 R. C. L. Supra, we must conclude that the legislature intended that both the word "may" and the word "shall" should be given their usual and ordinary meaning. Therefore, it is our view that if a trial judge adjudges that the costs shall be paid by the petitioner or any person or persons summoned or appearing at the hearing and such costs so adjudged cannot be collected from such persons, then such costs or the part that cannot be collected shall be paid by the county for as pointed out heretofore, the statutes makes a provision that:

"All costs not so collected shall be paid by the county."

Further, it is our view that if the trial judge in his discretion determines that the costs should be borne by the county in the first instance, then he has authority in his discretion to so adjudge the costs.

Now directing our attention to question number two, it will be noted from the reading of Article 10, Chapter 56, R. S. Mo. 1939, that there is not provided a statutory procedure for the collection of costs which a county is obligated to pay arising out of a hearing under the provisions of Section 9703 contained in said article and chapter. Therefore, we must conclude that the legislature intended that in such cases the costs should be collected in the same manner as costs are collected growing out of a court proceeding where the county is liable for the costs. Therefore, when we review other statutes for a plan of collection, our attention is drawn to Article 20, Chapter 30, R. S. Mo. 1939, which article sets up a plan for the collection of costs in criminal cases and which procedure is used nearly daily by the Circuit Clerk and for this reason we deem it sufficient to merely refer to Article 20, Chapter 30, as the correct procedure for the collection of said costs and do not deem it necessary to quote in length from the several sections contained therein.

#### CONCLUSION

1) The costs in a hearing held pursuant to Section 9703, R. S. Mo. 1939, may be adjudged by the trial judge to be paid by the petitioner or other person or persons appearing at said hearing. If for any reason the costs cannot be collected from such person then said costs shall be paid by the county.

OR

The trial judge may adjudge that the costs be paid by the county in which said proceedings are held.

2) The proper statutory procedure applicable for the collection of costs where the same are to be paid by the county is fully detailed in Article 20, Chapter 30, R. S. Mo. 1939.

Respectfully submitted,

B. Richards Creech  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

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