

CHILDREN. : "Neglected Child" question of fact. Would  
: not include child suffering from cruelty  
: of parents in counties of less than 50,000.  
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July 14, 1944

Honorable G. Logan Marr  
Prosecuting Attorney, Morgan County  
Versailles, Missouri



Dear Mr. Marr:

This will acknowledge the receipt of your letter of July 5, requesting an opinion of this office. Such letter, omitting caption and signature, is as follows:

"For three or four years, we have a female child now, 11 years old, who is afflicted with osteomyelitis of the hip bone. She goes to school, and uses two crutches most of the time. Her leg has been x-rayed and shows the diseased condition of the bone. The child wants to be treated, her 20 year old sister and her 18 year old brother want her to be treated. Her mother is dead. The father is unable to work, poor, and obtains social security relief. The father is ignorant and stubborn and refuses to permit any treatment for the child. The 20 year old sister and the 18 year old brother supports the family with their earnings and they want the child treated before her condition gets worse.

"The father makes the statement to the welfare workers that the child is showing some improvement, and perhaps she is in a minor way. But the poor child is compelled to go to a country school a mile away up and down two big hills, and this is a hardship on this crippled child. A school bus comes right by her door, and it will cost the father nothing to get the child to school on the bus and there will be no charge for tuition.

"The disease named can be treated scientifically for a cure, and without any apparent danger and without any cost to the father.

"The children named, the neighbors, the social security people seeks to make the father permit the treatment of the child. My office is called on for an opinion as to whether there is any law or remedy under the statutes that will enable a court order to be obtained to force the father to yield to a treatment of the child? I am requesting an opinion if the father can be compelled to submit the child to a treatment for the disease named?"

Section 9698 R. S. Mo., 1939, provides:

"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. For the purpose of this article, the words 'neglected child' shall mean any child under the age of seventeen years, who is homeless or abandoned, or who habitually begs or receives alms, is found living in any house of ill-fame, or with any vicious or disreputable person, or who is suffering from depravity of its parents, or other person in whose care it may be. The words 'delinquent child' shall include any child under the age of seventeen years who violates any law of this state, or any city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime, or who knowingly visits or enters a house of ill-repute or any place where any gaming device is operated; or any saloon or dramshop where intoxicating liquors are sold; or who is either habitually truant from any day school, or who, while in attendance at any school, is incorrigible, vicious or immoral. Any disposition of any delinquent child under this article, or any evidence given in such cases shall not in any civil, crim-

inal or other cause or proceeding whatever in any court be lawful or proper evidence against such child for any purpose whatever, except in subsequent cases under this article. The word 'child' or 'children' may mean one or more children, and the word 'parent' or 'parents' may mean one or both parents when consistent with the intent of this article. The word 'association' shall include any corporation which includes in its purpose the care or discipline of children coming within the meaning of this article. The words 'probation officer,' in all sections of this article, defining his powers and duties shall include his deputies. "

You will notice that this section defines "neglected child" as one under the age of seventeen years who is homeless or abandoned, or who habitually begs or receives alms, is found living in any house of ill fame, or with any vicious or disreputable person, or who is suffering from the depravity of its parents or other person in whose care it may be. This section applies to counties of less than 50,000 population, which is your situation.

Section 9673 R. S. Mo., 1939, which applies to counties over 50,000 defines "neglected child" as follows: "\* \* \* any child under the age of seventeen (17) years, who is destitute or homeless, or abandoned, or dependent upon the public for support, or who habitually begs or receives alms, is found living in any house of ill-fame, or with any vicious or disreputable person, or who is suffering from the cruelty or depravity of its parents, or other person in whose care it may be; \* \* \*". It must be noted that the word "cruelty" is specifically used in Sec. 9673, whereas, it is not used in Sec. 9698, which applies to counties of your population. Of course, the question of whether a child is a neglected child under either of these sections is purely a question of fact, however, the facts must support one of the elements of the definition. From the facts stated in your letter, it seems to me that the most that could be said, as far as determining whether your particular child was neglected or not, would be that it was suffering from the cruelty of its parents. Now, as I have heretofore pointed out, this is not grounds for declaring the

July 14, 1944

child "neglected" in counties of less than 50,000 population nor would the Child Hygiene division of the State Board of Health have any authority to interfere in a situation of this kind, inasmuch, as Sec. 9738 prohibits them from privately examining or treating any school child without the consent of its parents or guardian.

It might be possible for a civil suit to be brought to have another person appointed guardian on the ground that the parents are incompetent or unfit under Sec. 378 R. S. Mo., 1939. See Brewer v. Corey, 148 Mo. App. 193. A civil suit of this type would of course, not concern you in your office as prosecuting attorney.

CONCLUSION.

It is therefore the opinion of this office that the question of whether a child is a "neglected child" within the meaning of the laws of this state is one of fact, and that in counties of less than 50,000 population a "neglected child" does not include one suffering from the cruelty of its parents, nor may the State Board of Health cause a child to be treated for osteomyelitis without the consent of its parents.

Respectfully submitted

ROBERT J. FLANAGAN  
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APPROVED:

ROY McKITTRICK  
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RJF:LeC