

CHILDREN: : Circuit Courts in counties of 3rd and 4th
 COURTS: : classes, said counties having populations
 CONTEMPT: : of less than 50,000, have the power to make
 NEGLECTED CHILDREN: : orders touching upon the custody of neg-
 SHERIFFS: : lected children, and the power to direct
 : the sheriff to take physical custody of such
 : children for the purpose of carrying out
 : such orders of the court; and the sheriff
 : or any other person willfully or knowingly
 : disobeying such an order may be found to be
 : in contempt of the court.

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November 19, 1954

Honorable G. Derk Green
 Circuit Judge
 Twelfth Judicial Circuit
 Brookfield, Missouri

Dear Judge Green:

By letter dated September 27, 1954, you requested an opinion of this office as follows:

"A set of facts have developed in this circuit giving rise to a question that I believe should be submitted to your office for an opinion. From these facts it is obvious that court interpretation is most unlikely and injury sought to be prevented would occur before court action or ruling in the appellate court could be consummated. For this reason I request your ruling.

"The Prosecuting Attorney filed a petition in the Juvenile Division of the Court alleging that two designated children were neglected children within the meaning of the statutes. Notice of hearing was served upon the parents. Upon the date set evidence was heard and the court entered its finding and order that the children were neglected children within the meaning of the statutes, made them wards of the court and placed them in the care and custody of the County Director of the State Department of Public Health and Welfare.

"Custody was taken by the County Director and the children provided for in a foster home, with expense paid out of Welfare funds. Many months later the mother of the children appeared in court and the court ordered that the children remain in the status of wards, but that they be placed in the mother's home under

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the supervision of the County Director. After several months with the children in the mother's home under this arrangement, upon the recommendation of the County Director, after notice to the mother and evidence heard, the court ordered that the children be removed from the mother's home and provided for elsewhere by the County Director.

"The children were not surrendered by the mother and the court then made the further order that the County Director take the physical custody and that the Sheriff be and was thereby directed to carry out and enforce the court order by taking the children physically from the presence of the mother and from the mother's home and deliver them to the custody of the County Director. Certified copy of this order was delivered to the sheriff of the county in which the children were kept.

"The sheriff has declined to serve the order by taking the custody from the mother and delivering physical custody to the director. He takes the position that he has no authority to do so, but that the only method of enforcing the order is by citation for contempt as provided in Section 211.390, R.S.Mo. 1949. No question is made about the form of notice or orders made as above.

"Question One: Does the sheriff have authority to execute the court order?

Question Two: Is it the duty of the sheriff to execute the court order by taking physical custody from the mother?

Question Three: What is the proper method to effect such transfer and give effect to the court order?

"Thanking you, I am"

All statutory citations herein are Revised Statutes of Missouri, 1949.

Honorable G. Derk Green:

It is noted that all counties in your circuit are of the third class, and each county has a population of less than 50,000.

A neglected child is defined by Section 211.310 to be:

"1. Sections 211.310 to 211.510 shall apply to children under the age of seventeen years, in counties of the third and fourth classes, 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 sections 211.310 to 211.510, until the child shall have attained the age of twenty-one years.

"2. For the purpose of sections 211.310 to 211.510, 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 Circuit Court in counties of less than 50,000 population is given original jurisdiction over cases involving neglected children by Section 211.320.

The court is empowered by Section 211.390 to provide for the custody of neglected children. That section reads, in part, as follows:

"1. When any child coming under the provisions of sections 211.310 to 211.510 shall be adjudged to be neglected or delinquent or in need of the care of discipline and protection, the court may make an order committing the child, under such conditions

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as it may prescribe, to the care of some reputable person of good moral character, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for neglected children, or to any institution incorporated under the laws of this state that may care for children, or to any institution or agency which now is or hereafter may be established by the state or county for the care of children; or the court may place the child in the care and control of a probation officer, and may allow such child to remain in its home subject to the visitation and control of the probation officer, to be returned to the court for further proceedings whenever such action may appear to the court to be necessary; or the court may authorize the child to be placed in a suitable family home, subject to the friendly supervision of a probation officer and the further order of the court; or it may authorize the child to be cared for in some suitable family home in such manner as may be ordered by the court or may arrange for same through voluntary contributions or otherwise until suitable provision may be made for the child in a home without such payment.

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"3. After any child shall have come under the care or control of the juvenile court as herein provided, any person who shall thereafter knowingly contribute to the delinquency or neglect of such child, shall knowingly disobey, violate or interfere with any lawful order of said court, with relation to said child, shall be guilty of contempt of court, shall be proceeded against as now provided by law and punished by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred dollars or by both such fine and imprisonment.

Honorable G. Derk Green:

Since the Circuit Court has the power to order that custody of the children be given to the person mentioned in your letter, it has the power, under Section 476.070, to enforce such an order. Said section reads:

"All courts shall have power to issue all writs which may be necessary in the exercise of their respective jurisdictions, according to the principles and usages of law."

Sheriffs are required by Section 57.100 to " * * * execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by magistrates." Therefore, the sheriff is obliged to execute the order of your court.

In addition to the inherent power of a Circuit Court to punish for contempt, disobedience of a lawful order of the court is declared by Section 211.390.3, supra, to be contempt. Further, Section 476.110 provides:

"Every court of record shall have power to punish as for criminal contempt persons guilty of

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"(3) Willful disobedience of any process or order lawfully issued or made by it;"

Thus, a knowing or willful disobedience of a lawful order of the court constitutes contempt of that court, and may be punished.

CONCLUSION

In the premises, therefore, it is the opinion of this office that the Circuit Courts in counties of the third and fourth classes, said counties having populations of less than 50,000 each, have the power to make orders touching upon the custody of neglected children, and the power to direct the sheriff to take physical custody of such children for the purpose of carrying out such orders of the court. The

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sheriff or any other person willfully or knowingly disobeying such an order may be found to be in contempt of the court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

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