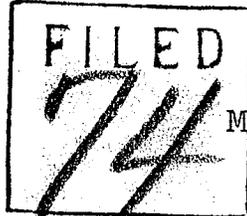


MAGISTRATE & CIRCUIT COURTS:
THIRD AND FOURTH CLASS COUNTIES:
DELINQUENT AND NEGLECTED CHILDREN:
DIVISION OF WELFARE:

Prosecuting attorneys in third and fourth class counties are authorized to file a complaint of neglected^{or} delinquent children in either circuit or magistrate

court. Likewise, the sheriff is authorized to file such a complaint in a magistrate court. Sheriffs of such counties having a county superintendent of public welfare or a probation officer, automatically become assistant probation officers without necessity of appointment.



May 3, 1955

Honorable C. Frank Reeves
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

This will acknowledge your request for an official opinion inquiring:

"1. I would like to have your opinion on the following:

"Does the Prosecuting Attorney have the authority to investigate proceedings in Juvenile Court based on his own information or complaint without an affidavit by some person of the County?

"2. If not, is there any other way to institute proceedings to declare a child either a neglected child or a Juvenile Delinquent without a petition by the Welfare Department or an affidavit of a citizen of the County, except by transfer of Juvenile Court when an information has been properly filed in the Magistrate or Circuit Court charging a person under seventeen years of age with the commission of a crime, a misdemeanor or a felony?

"3. Can the Sheriff, as Probation Officer, make a complaint that will confer jurisdiction on the Magistrate?

"4. Does Section 211.255, Laws 1953, constitute the Sheriff Probation Officer without any express appointment in Counties of third class where there is no such officer as mentioned in said section?"

Honorable C. Frank Reeves

Section 211.310 to 211.510, RSMo 1949, applies to children under seventeen years of age in third and fourth class counties (see Section 211.310, supra).

Under Section 211.360, RSMo 1949, any reputable person may file a complaint that any child in the county appears to be neglected or delinquent, whereupon the county prosecuting attorney shall file a petition with the clerk of the juvenile court stating the facts and verified by his affidavit, which affidavit may be on information and belief. Said section reads:

"When any reputable person, being a resident of the county, shall file a complaint with the prosecuting attorney, stating that any child in the county appears to be a neglected or delinquent child, the prosecuting attorney shall thereupon file with the clerk of the juvenile court a petition in writing, setting forth the facts and verified by his affidavit. It shall be sufficient that the affidavit be on his information and belief. It shall be the duty of the prosecuting attorney immediately thereafter to fully investigate all the facts concerning such neglected or delinquent child including its school attendance, home condition, and general environment, and to report the same in writing to the juvenile court, and upon hearing of such complaint to appear before the juvenile court and present evidence in connection therewith. The prosecuting attorney shall receive as compensation for the additional services and duties required under this law, in addition to the salary and fees now allowed prosecuting attorneys by law, an amount equal to twenty-five per cent of the annual salary of such prosecuting attorney, per annum, to be paid in equal monthly installments upon the warrant of the county court issued in favor of the prosecuting attorney on the county treasurer for that purpose; provided, however, that this section shall be applicable only to counties of the third and fourth classes."

Honorable C. Frank Reeves

We are unable to find any specific statute authorizing prosecuting attorneys to file such complaint; however, we are inclined to believe that the county prosecuting attorney may file such a complaint by virtue of the provisions of Section 211.360, supra, as a reputable person. Webster's New International Dictionary defines "reputable" as follows:

"1. Enjoying good repute; of excellent reputation; held in esteem; honorable; estimable; as, a reputable citizen, firm, or calling; reputable conduct."

Merely because the prosecuting attorney is a public officer of said county does not disqualify him from coming within the classification of a reputable person. Furthermore, we do know that it is the general and accepted practice in most of such counties, and has been for a long time, for the prosecuting attorney to file such complaints. If this were not true, the administration of laws pertaining to delinquent and neglected children would be difficult to administer. While many persons may have knowledge that such complaints should necessarily be filed, many hesitate to file same against minors.

Therefore, we are of the opinion that the county prosecuting attorney may file such complaints, as well as any other reputable person, a resident of said county.

In view of our conclusion as to your first inquiry, we deem it unnecessary to answer your second request.

You further inquire can the sheriff, as probation officer, make a complaint that will confer jurisdiction on the magistrate? He can in like manner, as the prosecuting attorney, qualify as a reputable person under the provisions of Section 211.360, supra. He may file such a complaint under the same authority cited herein for the prosecuting attorney doing the same.

Furthermore, we might add here that said complaint does not have to be filed only in the circuit court, but may also be filed in the magistrate court, which court, in counties of less than 70,000 inhabitants, has concurrent juvenile jurisdiction with the circuit court. While the statutes do not so declare the law, the Constitution of Missouri, under Section 20, Article V, providing for such concurrent jurisdiction, is self-enforcing, and therefore the legislature cannot abrogate the provisions of such Constitution by enacting conflicting laws therewith or for failure

Honorable C. Frank Reeves

to amend the statutes to conform or implement said constitutional provision. (See copies of enclosed opinions so holding.)

Our answer to your fourth and last query is in the negative. Section 211.455, RSMo Cum. Supp. 1953, provides that in third and fourth class counties having a county superintendent of public welfare, or probation officer, the sheriff shall be designated as assistant probation officer; however, said statutes provide in such counties having neither a county superintendent of public welfare or probation officer, that he shall investigate all cases arising under Sections 211.310 to 211.510, and shall furnish the court information and assistance as the judge may require without any mention whatsoever of his being designated or appointed as a deputy or probation officer. So we must hold that Section 211.455, supra, does not have the effect of making the county sheriff also an assistant probation officer in cases where said counties have neither a superintendent of public welfare or a probation officer. In such counties having a county superintendent of public welfare or a probation officer, we believe that it was the legislative intent that the sheriff of such county automatically becomes the assistant probation officer of such counties.

CONCLUSION

It is the opinion of this department that the prosecuting attorney of counties of the third and fourth class do have authority to file such complaints in the circuit and magistrate court without the necessity of filing an affidavit by some other person in the county; likewise, that the sheriff in such counties may make a complaint to a magistrate court who has concurrent juvenile jurisdiction with the circuit court. Furthermore, under the provisions of Section 211.455, supra, the sheriff, in counties of the third and fourth class having a county superintendent of welfare or a probation officer, does not have to be appointed, but automatically becomes an assistant probation officer of such county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARH/vtl

Enclosures - 3

9-22-47 to B.C. Tomlinson
9-2-52 to Roderick R. Ashby
2-1-54 to Ralph B. Nevins