

FEES AND SALARIES:  
JUVENILE COURT:  
COSTS: FEES:  
PROSECUTING ATTORNEY:  
DELINQUENT CHILDREN:  
NEGLECTED CHILDREN:

(1) Since a juvenile court proceeding is not "of a criminal nature", a prosecuting attorney may not collect the five dollar fee allowed in Section 56.310, RSMo 1949, for "judgments upon any proceedings of a criminal nature;" but ~~that~~ he shall be allowed the five dollar fee as

provided in Section 56.310, "for his services in all actions which it is or shall be made his duty by law to prosecute or defend ...."

(2) Juvenile court costs according to Section 211.380, RSMo 1949, may be assessed in the court's discretion against either the "petitioner, or any person or persons summoned or appearing," or against the county.

September 7, 1955

Honorable LeRoy Snodgrass  
Prosecuting Attorney  
Miller County  
Tuscumbia, Missouri



Dear Sir:

This is in response to your request for an opinion dated August 10, 1955, which reads as follows:

"I would like to have your opinion concerning Sections 56.310 and 211.380, MRS 1949, upon the following:

"1. Under Section 56.310, MRS 1949, Prosecuting Attorney fee section for Class three & four counties, the provision states . . . . for judgments upon any proceedings of a criminal nature, otherwise than by indictment or information, five dollars; ...

(A) In Juvenile matters under Chapter 211, MRS 1949, is the Prosecuting Attorney allowed a fee in such matters under Section 56.310, MRS 1949?

(B) If so, regardless of what grounds under that Chapter 211, MRS 1949, delinquency is found by the Court, would that fee be five dollars?

Honorable LeRoy Snodgrass

(C) In all such juvenile matters should there be a fee of five dollars regardless of whether or not there is delinquency found by the Court because a judgment is taken or given in each case?

"2. Under Section 211.380, does the Court have discretion to assess the costs against the juvenile, parents, guardian, or petitioner as he sees fit? Does this section require the Court to assess the costs against the above named or any of them, individually or collectively, before he may require the County to pay the full costs or the balance if part of the costs have been paid?"

In regard to that part of Section 56.310, RSMo 1949, which you quote, it is clear that, for a prosecuting attorney to receive a five dollar fee for his participation in juvenile court proceedings, such proceedings must be "of a criminal nature." The attached opinion written to the Honorable Donald W. Bunker, Executive Secretary, Board of Probation and Parole, on March 5th, 1953, makes clear that a juvenile court proceeding is not a criminal judgment. See, in addition, 43 C.J.S. Section 99; State ex rel. Matacia v. Buckner, 300 Mo. 359, 254 S.W. 179; State ex rel. Shartel v. Trimble, 333 Mo. 888, 63 S.W. (2d) 37.

In summary, although no Missouri case has directly answered your question in regard to the relationship of that part of the fee statute which you quote and the juvenile court law, the best authority is that juvenile court proceedings should not be regarded as bearing the implications of a criminal judgment which would be the case if we were to say that the proceedings are "of a criminal nature." Section 56.310, RSMo 1949, provides further, however, that the prosecuting attorney shall receive a five dollar fee "for his services in all actions which it is or shall be made his duty by law to prosecute or defend...." Since the word "prosecute" in this connection means merely "to proceed against someone judicially," and since Section 211.360, RSMo 1949, requires the prosecuting attorney to participate in juvenile court proceedings, the prosecuting attorney shall receive a five dollar fee for his participation in a juvenile court proceeding which fee will then be paid to the county treasury under Section 56.340, RSMo 1949. The prosecuting attorney is allowed this fee regardless of the grounds on which delinquency is found and regardless of whether delinquency is found at all.

Honorable LeRoy Snodgrass

In answer to your second question, it is believed that the attached opinion written to the Honorable Max R. Wiley, Prosecuting Attorney, DeKalb County, on October 29, 1943, points out correctly that the court may assess the costs of a juvenile court proceeding under Section 211.380, RSMo, 1949, against "the petitioner, or any person or persons summoned or appearing," or, if the costs are not so adjudged, then the court may require the county to pay.

CONCLUSION

It is, therefore, the opinion of this office that, since a juvenile court proceeding is not "of a criminal nature", a prosecuting attorney may not collect the five dollar fee allowed in Section 56.310, RSMo 1949, for "judgments upon any proceedings of a criminal nature;" but that he shall be allowed the five dollar fee as provided in Section 56.310 "for his services in all actions which it is or shall be made his duty by law to prosecute or defend...."

It is further the opinion of this office that juvenile court costs according to Section 211.380, RSMo 1949, may be assessed in the court's discretion against either the "petitioner, or any person or persons summoned or appearing," or against the county.

Yours very truly,

John M. Dalton  
Attorney General

Enclosures - Donald W. Bunker  
3-5-53

Max R. Wiley  
10-29-43

WLaB:vlw