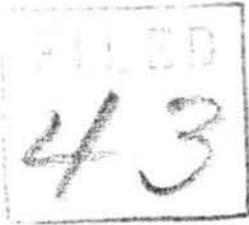


COURTS: Section 211.321, RSMo 1949 Cum. Supp. 1957
JUVENILE COURTS: is constitutional.
CONSTITUTION:



January 22, 1958

Honorable C. M. Hulen
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Mr. Hulen:

Reference is made to your request for an official opinion of this office as follows:

"Will you please advise me as to your opinion concerning the constitutionality of Section 211.321, Revised Statutes of the State of Missouri, entitled 'Juvenile court records-- records of peace officers as to children-- destruction of records', with particular reference to sub-section one and sub-section two, which read as follows.

"1. The proceedings of the juvenile court shall be entered in a book kept for that purpose and known as the juvenile records. These records as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having a legitimate interest therein.

"2. Peace officers' records, if any are kept, of children, shall be kept separate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court. This sub-section does not apply to children who are transferred to courts of general jurisdiction as provided by section 211.071."

Honorable C. M. Hulén

Please find enclosed a copy of an opinion to Honorable Hugh H. Waggoner, dated April 8, 1953, to the effect that information compiled under subsection 4, Section 43.120, RSMo 1949, is available to peace officers only.

Please note that on page 2 that opinion quoted from 53 C.J.S., p. 625, in regard to the state's right to grant or withhold the privilege of the inspection of public records.

Since Section 211.321, RSMo 1949, Cum. Supp. 1957, is of such recent origin, there have been no appellate court decisions in regard thereto. There are, however, a great many opinions dealing generally with the constitutional aspects of the juvenile code.

In 1923 the Missouri Supreme Court unanimously decided the case of State v. Buckner, 254 SW 179, in which was said at l.c. 180 as follows:

"The act has another aspect in which it is not affected by this rule. Its principal, if not sole, purpose is not trial and punishment for crime, but the protection and support of neglected children and the reformation of delinquent children. It is well settled that in the cases of delinquent children the state has the power in proper circumstances to take over their custody in order to insure their security, training, and reformation. State ex rel. v. Tinker, supra, and cases cited: In re Sharp, 15 Idaho, 120, 96 Pac. 563, 18 L.R.A. (N.S.) 886, and note, Re Hook, 95 Vt. 497, 115 Atl. 730, 19 A.L.R. 610. The power exerted by the state, parens patriae, is asserted in its right to supply proper custody and care in lieu of that of which neglected and delinquent children are deprived. Farnham v. Pierce, 141 Mass. loc. cit. 205, 6 N.E. 830, 55 Am. Rep. 452; Ex parte Ah Feen, 51 Cal. 280; In re Turner, 94 Kan. 115, 145 Pac. 871, Ann. Cas. 1916E, 1022, and cases cited.* * *"

Again, in State ex rel. White v. Swink, 256 SW2d 825, l.c. 831, the St. Louis Court of Appeals made the following reference to Chapter 211, RSMo 1949:

"The Juvenile Court Act, Title 12, Chapter 211 RSMo 1949, V.A.M.S., is a complete law within itself dealing with minors under the age of seventeen years. State ex rel. Shartel v. Trimble, 333 Mo. 888, 63 S.W. 2d 37, loc. cit. 38.* * *"

Honorable C. M. Hulen

It is thought that the rule is, that acts of the Legislature are presumed to be constitutional, as expressed (by our Supreme Court) in the case of City of Springfield v. Smith, 19 SW2d 1, 1.c. 3, wherein it is stated:

"Both upon principle and authority the Acts of the Legislature are to be presumed constitutional until the contrary is clearly shown; and it is only when they manifestly infringe on some provision of the Constitution that they can be declared void for that reason. In case of doubt every possible presumption, not directly and clearly inconsistent with the language and subject-matter, is to be made in favor of the Constitutionality of the Act.' Hamman v. Cen. Coal & Coke Co., 156 Mo. 232, loc. cit. 242, 56 S.W. 1091, 1093; Miners' Bank v. Clark, 252 Mo. 20, loc. cit. 30, 158 S.W. 597."

CONCLUSION

It is, therefore, the opinion of this office that Section 211.321, RSMo 1949 Cum. Supp. 1957, is constitutional.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Very truly yours,

JOHN M. DALTON
Attorney General

JWF:db