

PROSECUTING ATTORNEYS:  
DIVISION OF WELFARE:  
JUVENILE COURTS:

It is the duty of the prosecuting attorney in a fourth class county to represent the Division of Welfare in adoption proceedings involving a child whose legal custody they have accepted.

October 21, 1969

OPINION NO. 348



Mr. Winston V. Buford  
Prosecuting Attorney  
Shannon County  
Eminence, Missouri 65466

Dear Mr. Buford:

This is in response to your request for an opinion from this office on the following matter:

"I would like to have your opinion whether or not a Prosecuting Attorney of a fourth class county is obligated to represent the Division of Welfare wherein there is a dispute between the Division of Welfare and a man and a wife as a result of an attempt by the man and wife to adopt a child that has been placed by the Division of Welfare, and the Division of Welfare is resisting the proposed adoption."

We direct your attention to Section 56.060, RSMo Supp. 1967, which pertains to the duties of prosecuting attorneys. The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned and defend all suits against the state or county. Since under this statute, it is the duty of the prosecuting attorney to prosecute and defend actions in which the state is concerned, the question arises as to what interest the State Division of Welfare may have in adoption proceedings.

Section 207.020 RSMo Supp. 1967, defines the powers, duties and functions of the State Division of Welfare and provides in part:

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"(17) To accept for social services and care homeless, dependent or neglected children in second, third and fourth class counties whose legal custody is vested in the division of welfare by the juvenile court; . . ."

Shannon County is a fourth class county. From the facts as stated, apparently the legal custody of the child in question has been accepted by the State Division of Welfare with the approval of a court of competent jurisdiction under Section 207.020 (17) supra.

Proceedings for the adoption of children is governed by Chapter 453 RSMo Supp. 1967.

Section 453.060 RSMo Supp. 1967, provides that a writ of summons and a copy of the petition for adoption shall be served on designated persons or agencies including:

"(3) Any person, agency, organization or institution, within or without the state, having custody of the child sought to be adopted under a decree of a court of competent jurisdiction even though its consent to the adoption is not required by law;

"(4) The legally appointed guardian of the child.

"4. Upon service, whether personal or constructive, the court may act upon the petition without the consent of any party, except that of a parent whose consent is required by sections 453.030 to 453.050, and the judgment is binding on all parties so served. Any such party has the right to appeal from the judgment in the manner and from provided by the civil code of Missouri."

In the case of *In re Duren*, 200 S.W.2d 343, the court held the legal guardian of a child was entitled to notice and to appear, dissent and defend in an adoption proceeding.

Under the above statute when the State Division of Welfare has been awarded the legal custody of a child, it is necessary for a summons and a copy of the petition for adoption of such child be served on the State Division of Welfare and it has the right to appear, dissent and defend the adoption proceedings and appeal from any decision rendered. It is the duty of the prosecuting attorney to represent the State Division of Welfare when requested.

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CONCLUSION

It is the opinion of this department that it is the duty of a prosecuting attorney in a fourth class county to represent the State Division of Welfare, if requested by the Division, in an adoption proceeding involving a child whose legal custody has been accepted by the Division of Welfare under Section 207.020 RSMo Supp. 1967. .

The foregoing opinion, which I hereby approve, was prepared by my assistant Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH  
Attorney General