JUVENILE OFFICERS:
PROSECUTING ATTORNEYS:
SHERIFFS:

Prosecuting attorneys and sheriffs or other law enforcement officers occupy positions that are incompatible with and in conflict with the position of the juvenile officer under the Juvenile Act, and therefore, such officers may not serve as juvenile officers or deputy juvenile officers.

OPINION NO. 141

May 7, 1970

FILED
141

Honorable Alden S. Lance
Prosecuting Attorney
415 West Main Street
Savannah, Missouri 64485

Dear Mr. Lance:

This opinion is in response to your request in which you ask whether or not a sheriff of a third class county which is a part of the judicial circuit containing a second class county may serve as deputy juvenile officer for that county when the juvenile officer is from the second class county which is a part of the same judicial circuit.

You have furnished us with other information concerning the situation. However, for reasons which will become apparent, we w ll not go into further detail in this opinion.

That is to say, in our Opinion No. 12, 2/3/58, to O.O. Brown, we held that a prosecuting attorney of a third class county could be appointed as the juvenile officer. Likewise, in Opinion No. 20, 10/29/57, to Curtis, this office held that a sheriff can be appointed as a juvenile officer. In view of the recent court decisions, we are now of the opinion that the conclusions reached in these two cited opinions are now incorrect and they are hereby withdrawn.

On January 12, 1970, the Supreme Court of Missouri in State of Missouri vs. Joseph Franz Arbeiter, 449 SW 2d. 627, stated quite clearly the position of the juvenile officer and the juvenile courts with relation to the juvenile; and in our view, the opinion of the court requires that we now conclude that the position of prosecuting attorney and the position of a law enforcement officer such as the sheriff is in conflict with and incompatible with the position of juvenile officer.

For example, Commissioner Welborn in the Arbeiter case noted that:

> "Considerations of 'fundamental fairness' . . . do not permit the state, in the harsh adversary arena of the criminal courts, to take advantage of the procedures and attitudes which it promoted under the Juvenile Code."

This conclusion emphasized that such practices would be tantamount to a breach of faith with the child, would destroy the juvenile court parens patriae relation to the child, and would violate the non-criminal philosophy which underlies the juvenile act.

In quoting from Harling v. United States, 295 F.2d 161, decided in 1961 by the United States Court of Appeals for the District of Columbia, the court stated:

> "In United States v. Dickerson, 1959, 106 U.S. App. 221, 225, 271 F.2d 487, 491, we strongly intimated that any 'departure in practice from that philosophy would require the application of procedural safeguards observed in criminal proceedings.' These safeguards, however, are wholly inappropriate for the flexible and informal procedures of the juvenile court which are essential to its parens patriae function. To avoid impairment of this function, juvenile proceeding must be insulated from the adult proceeding. This requires that admissions by a juvenile in connection with the non-criminal proceedings be excluded from evidence in the criminal proceedings."

The court in Arbeiter, also quoting from State v. Maloney, 102 Ariz. 495, 433 P.2d 625, referred to the value of the procedures employed by the juvenile court and the manner in which the court gathers evidence. For example, it was stated that one of the most valuable tools of the juvenile court is the prehearing report which usually includes a summary situation, a history of the family and the child, and a recommendation of disposition, and often includes confidential information from people who know the child.

The conclusion followed that one of the underlying policies of the Juvenile Code was to separate the juvenile process from the criminal procedure.

Further, quoting from State v. Gullings, 244 Ore. 173, 416 P.2d 311, the Supreme Court in Arbeiter continued stating:

> "The parens patriae theory of juvenile treatment. . . is necessarily based upon a close relationship between the child and the representatives of the court. The desired result is the child's trust and confidence in the representatives of the court and the full disclosure by the child to them. Until such a condition exists, the chances for successful and meaningful treatment on a parens patriae basis are minimal. The essence of such treatment is the establishment of a nonformal adversary atmosphere which is the antithesis of adult criminal procedure. . . If information secured by juvenile authorities is indiscriminately used as a basis for imposing criminal responsibility, juvenile courts cannot legitimately complain if traditional criminal constitutional standards are required of them in all their proceedings. Such a result would naturally be self-defeating if there is little room for the parens patriae relationship to operate within the narrow confines of standards evolved for use in the adversary criminal setting."

It is clear from the opinion in Arbeiter that the parens patriae relationship does not exist between police and the child, but between the court and the child, and that there is a clear distinction between the function of the police and the prosecuting attorneys who are responsible for solving and prosecuting transgressions against society and the function of the juvenile officers who are responsible for the rehabilitation of the child and the treatment of his emotional and family problems where the free exchange of information and the close relationship is important.

In reaching these conclusions, we are also persuaded by the dissenting opinion of Judge Seiler in State v. Reagan, 427 S.W.2d 371 (1968), in which he stated at l.c. 380:

> "Anyone who has any experience with children knows how important it is to corrective action to get after the truth and to have the confidence and the respect of the child. Henceforth, however, any advisor of a juvenile who knows of this decision --- lawyer, minister, relative, teacher, friend, or whoever it may be --- will advise a juvenile that no matter what assurances he receives from the juvenile authorities he cannot safely tell them the truth if that involves him in a criminal act,

> because it may well turn out that what he tells them will wind up in the hands of the prosecuting authorities 'for the purposes of inspection, copy and the use in preparation of trial' against him. This decision delivers a further blow to the rehabilitative aspect of juvenile court work. It will keep juveniles from speaking freely."

In addition, we note that Section 211.271 of the Juvenile Code was amended by House Bill No. 375 of the 75th General Assembly, in particular Paragraph 3 thereof, to read as follows:

> "3. After a child is taken into custody as provided in Section 211.131, all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under the chapter, as well as all reports and records of the juvenile court are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in any proceedings, civil or criminal, other than proceedings under this chapter."

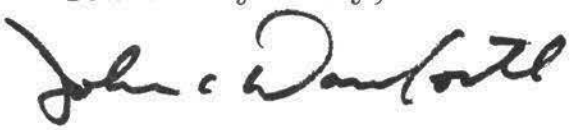
As a result, as we stated above, we necessarily conclude that the position of prosecuting attorney, sheriff or law enforcement officer is such that it is under these decisions obviously incompatible and in conflict with the function and position of the juvenile officer in this state.

CONCLUSION

It is, therefore, the opinion of this office that prosecuting attorneys, sheriffs or other law enforcement officers occupy positions that are incompatible with and in conflict w th the position of the juvenile officer under the Juvenile Act, and therefore such officers may not serve as juvenile officers or deputy juvenile officers.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General