

March 30, 1971

Opinion Letter No. 219
Answered by letter (Klaffenbach)

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



Dear Mr. Lance:

This letter is in response to your opinion request in which you ask the following question:

"May a Police Judge who is a lawyer and elected to the office in a Fourth Class City within a Judicial Circuit containing a Second Class County, serve as Deputy Juvenile Officer for the county in which the Fourth Class City of which he is the duly elected Police Judge?"

Additionally you refer to our Opinion No. 141, dated May 7, 1970 which was addressed to you and in which we held that prosecuting attorneys and sheriffs or other law enforcement officers occupied 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.

With respect to the question that you now pose we note that the police judge of such a city is, under the provisions of Section 98.510 RSMo. 1969, a conservator of the peace, and has exclusive original jurisdiction to hear and determine all offenses against the ordinances of the city.

Under Section 211.031 RSMo. 1969, pertaining to the jurisdiction of the juvenile courts we note that Subsection (1) (d) gives the juvenile court exclusive jurisdiction over a "child", as defined in that chapter, who is "alleged to have violated a state law or municipal ordinance" and further under Subsection (2) has jurisdiction concerning "any minor seventeen years of age or older who may be within the county, and who is alleged to have violated a state law or municipal ordinance prior to having become seventeen years of age".

Honorable Alden S. Lance

Under Section 211.041 RSMo. 1969, the juvenile court once having acquired jurisdiction of a child may retain jurisdiction for the purposes of Chapter 211 until he has attained the age of twenty-one years, with an exception, not pertinent here.

Section 211.071 RSMo. 1969, with respect to prosecutions under the general law states:

"In the discretion of the judge of the juvenile court, when any petition under this chapter alleges that a child of the age of fourteen years or older has committed an offense which would be a felony if committed by an adult, or that the child has violated a state or municipal traffic law or ordinance or that a minor between the ages of seventeen and twenty-one years over whom the juvenile court has jurisdiction has violated any state law or municipal ordinance, the petition may be dismissed and such child or minor may be prosecuted under the general law, whenever the judge after receiving the report of the investigation required by this chapter and hearing evidence finds that such child or minor is not a proper subject to be dealt with under the provisions of this chapter."

Clearly then under the last quoted section such a child who has allegedly violated a municipal ordinance may be prosecuted for such ordinance violation. The police judge who also serves as a deputy juvenile officer exercising the powers of the juvenile officer under Chapter 211 would be placed in the incompatible situation of acting as an arm of the state with respect to the state's *parens patriae* position with the juveniles and at the same time having the duty as police judge to pass upon cases of alleged ordinance violations which will from time to time involve such juveniles as are prosecuted under general law. In addition, although prosecution under general law is within the discretion of the judge of the juvenile court, no doubt the recommendations of the juvenile officer and his deputies will be given some consideration in the ultimate determination made by the juvenile court.

For these reasons and for the further reasons expressed in our prior opinion to you, it is our view that the office of such a police judge is incompatible with the office of juvenile officer or deputy juvenile officer.

Very truly yours,

JOHN C. DANFORTH
Attorney General