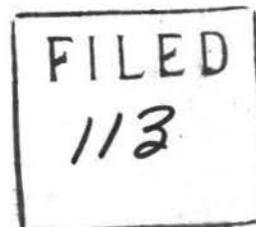


CIRCUIT ATTORNEYS:                   The prosecuting attorney in each county  
PROSECUTING ATTORNEYS:           and the circuit attorney of the City of  
  St. Louis have authority to institute  
civil collection remedies for the collection of moneys assigned to  
the state under the provisions of Public Law 93-647, relating to fa-  
mily support.

OPINION NO. 113

June 25, 1975



Mr. Lawrence Graham, Director  
Department of Social Services  
Broadway State Office Building  
Jefferson City, Missouri 65101

Dear Mr. Graham:

This is in response to your request for an opinion from this office as follows:

"Pursuant to Public Law 93-647, 93rd Congress, H. R. 17045, Part D, Section 456 (a), which in part states:

'The support rights assigned to the State under section 402 (a) 26 shall constitute an obligation owed to such State...,'

may prosecuting attorneys in this State institute civil collection remedies under Sections 56.060 and 56.070 (RSMo. 1969) for the recovery of monies owed to the State of Missouri pursuant to the aforesaid public law? Does your answer to the preceding apply to the Prosecuting Attorney of the City of St. Louis?"

You further state that Public Law 93-647 requires all states to establish an effective program for "locating absent parents, establishing paternity, and obtaining child support" and that under the provisions of this law if the state fails to establish such a program, it would incur the loss of five percent of its aid for dependent children funds.

For the purposes of this opinion, we assume that your statement as to the requirements of Public Law 93-647, 93rd Congress,

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H. R. 17045, is correct and you want to know whether prosecuting attorneys in this state may institute civil collection remedies for the recovery of moneys owed to the state of Missouri pursuant to the aforesaid Public Law.

Public Law 93-647, 93rd Congress, H. R. 17045, 42 U.S.C. 656, provides in part:

"Sec. 456. (a) The support rights assigned to the State under section 402(a)(26) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes." (Emphasis supplied)

Section 56.060, RSMo, provides in part:

"Each prosecuting attorney shall commence and prosecute all civil and criminal actions in his county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. . . ."

Under this statute, it is the duty of the county prosecuting attorney to prosecute civil actions in which the state is concerned.

Section 56.070, RSMo, provides in part as follows:

"The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. . . ."

Section 56.430, RSMo, provides in part:

"At the general election to be held in this state in the year 1948, and every four years thereafter, there shall be elected in the city of St. Louis one circuit attorney, who shall reside in said city, and shall possess the same qualifications and be subject to the same duties that are prescribed by this chapter for prosecuting attorneys throughout the state, . . ."

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Under this statute, the circuit attorney of the City of St. Louis has the same duties and responsibilities in this respect as prescribed by law for prosecuting attorneys throughout the state.

In State ex rel. Thrash v. Lamb, 141 S.W. 665 (Mo. 1911), the provisions of what is now Section 56.060, RSMo, were considered by the court; and the court stated, l.c. 669, as follows:

"The history of this legislation shows that since, 1825, it has been the policy of this state, as indicated by the various acts passed by the Legislature, to impose upon the local state's attorney, whether known as the circuit or prosecuting attorney, the duty of instituting proceedings in behalf of the State in matters arising within his local jurisdiction. . . ."

In State to Use of Consolidated School Dist. No. 42 of Scott County v. Powell, 221 S.W.2d 508 (Mo. 1949), the above-statutory provisions were considered by the court in an action by the prosecuting attorney to recover funds allegedly to have been illegally expended by members of the school board. The court stated, l.c. 510:

"Section 12942, R.S.1939, Mo.R.S.A., expressly provides that '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 \* \* \*.' Section 12944, R. S.1939, Mo.R.S.A., provides that 'he shall prosecute or defend, as the case may require, all civil suits in which the county is interested \* \* \*.' Neither the word 'concerned' nor the word 'interested' is defined, but one of the definitions given for the word 'concerned' is 'affected, disturbed, troubled, interested; as to be concerned for one's safety.' Webster's New International Dictionary (2nd Edition). There can be no doubt that the state was interested, concerned and affected by the illegal transfer and dissipation of the Teachers' Funds of this school district."

Under the provisions of Public Law 93-647, the support rights assigned to the state constitute an obligation owed to the state by the individual responsible for providing such support. Certainly,

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the state of Missouri is concerned in collecting all moneys it is entitled to receive under an assignment as provided for under the provisions of Public Law 93-647; and the prosecuting attorney is not only authorized but it is his duty to institute civil proceedings for the recovery of moneys owed to the state of Missouri and this applies also to the circuit attorney of the City of St. Louis.

CONCLUSION

It is the opinion of this office that the prosecuting attorney in each county and the circuit attorney of the City of St. Louis have authority to institute civil collection remedies for the collection of moneys assigned to the state under the provisions of Public Law 93-647, relating to family support.

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