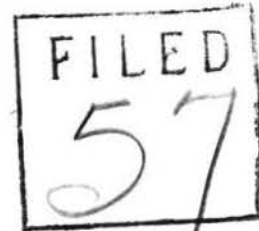


MISSOURI TRAINING) Costs of transportation of boys to be paid by
SCHOOL) state or county;

DELINQUENT) Costs of transportation to reformatory paid
by county.

February 15, 1938

Hon. J. E. Matthews
Director Department
of Penal Institutions
Jefferson City, Missouri



Dear Sir:

We have your request of February 12, 1938, for an opinion which is in part as follows:

"Many times the question of cost in bringing a boy here has arisen, whether or not the County or State pays for such cost. I am attaching copy of report from Mr. Highfill on the subject, and I would like to have an official opinion on this, in order that we will comply with the law."

This opinion is being written with particular reference to the juvenile act in counties of less than fifty thousand population.

We call your attention to Section 8357 R. S. Missouri 1929, which in part provides as follows:

"In all cases of conviction of felony, wherein the punishment is commitment to the reformatory, the cost of the proceedings and of the delivery of such person to the reformatory shall be paid by the state; and in all cases of misdemeanor, wherein the punishment is commitment to the reformatory, the cost of the proceedings and the delivery of such person to the reformatory shall be paid by the county in which the conviction is had.* * *"

The question arises as to whether all persons committed to the reformatory (now the Missouri Training School for Boys) have been convicted as that term is used in the above statute.

Section 14159 R. S. Missouri 1929 provides that boys over the age of seventeen and under the age of twenty-one who are found delinquent in a court having jurisdiction of misdemeanors may be sentenced to the reformatory. In such a case all state rights guaranteed by the constitution to a defendant in a criminal trial must be preserved in this proceeding.

In dealing with boys under the age of seventeen, who may be convicted, we have three specific groups to deal with, (Section 8350 Laws of Missouri 1933, page 331), as follows: (1) Boys convicted under the general law for a criminal offense, the minimum punishment of which is ten years in the penitentiary; (2) Boys convicted of other felonies wherein the minimum punishment is less than ten years in the penitentiary; (3) Boys convicted of a misdemeanor.

In the first class above enumerated a boy under the age of seventeen may be tried for a criminal offense which carries a minimum punishment of ten years in the penitentiary. Under such circumstances it is optional with the trial judge to sentence such boy to the penitentiary or to the reformatory. In either event the boy has been convicted, and the cost of transferring him to the reformatory is to be paid by the state, 8357 supra, and his support is fixed at fifteen dollars per month, to be paid by the county, Sections 8358, 8359 R. S. Missouri 1929.

In the second class of cases, where the boy is convicted of a felony, carrying a minimum punishment of less than ten years in the penitentiary, he may be sentenced to the reformatory, 8350 supra. In this case the cost of transferring such boy to the reformatory is to be paid by the state under Section 8357 supra, while the support of such boy while in the reformatory is to be paid by the county, Sections 8358, 8359 supra.

In the third case, where the boy is convicted of a misdemeanor he may be sentenced to the reformatory, 8350 supra. In this case the cost of his transportation to the reformatory is to be paid by the county, 8357 supra, and his support while in the reformatory is to be paid by the county, Sections 8358, 8359, supra.

There is still another class of individuals who are committed to the reformatory under the juvenile act who are known as "delinquents". When a boy is tried in the juvenile court for delinquency, which acts of delinquency may or may not constitute a violation of a criminal statute, he can only be adjudged a delinquent, Section 14161 R.S. Missouri 1929. A person who is adjudged a delinquent under a juvenile act has not been found guilty of any criminal offense and there has been no conviction for either a felony or misdemeanor. Lang vs. Commonwealth, 226 S.W. 379, 383, 190 Ky. 29; Alexander's Administrator vs. Kentucky Bankers' Association, 35 S.W. (2) 287, 288, 237 Ky. 232. It therefore appears that a person who is adjudged delinquent in the juvenile court is never convicted of either a felony or a misdemeanor as the term conviction is used in Section 8357 supra. This appears sustained by a decision of the Supreme Court In Banc in State ex rel. vs. Rutledge, 13 S.W. (2) 1061, l. c. 1064, wherein the Court pointed out that although the juvenile court has exclusive jurisdiction of boys under the age of seventeen, such boy may be tried for delinquency or may be tried for a criminal offense.

The cost of such juvenile hearings is taxed against the County, Section 14166 R. S. Missouri 1929. It is made the duty of the probation officer "to take charge of any child before and after hearing as may be directed by the court", Section 14173 R. S. Missouri 1929, and the support of such delinquent while in the reformatory is to be paid by the County, Section 14176, Section 8358 R. S. Missouri.

Under Section 14167 R. S. Missouri 1929, it is the duty of the juvenile judge to determine whether or not a boy is "delinquent" before ordering any commitment. The juvenile records should not recite that the boy under seventeen years of age is found guilty of a felony or misdemeanor but it should only recite that he is found to be delinquent within the meaning of the juvenile act. Such boy is not being tried for a criminal offense and is not accorded in such trial the benefits of certain

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constitutional guarantees accorded to persons who are being tried for a crime. State ex rel. vs. Rutledge supra. The inclusion of any language in a commitment of a juvenile to a reformatory reciting that such delinquent has been found guilty of a felony or misdemeanor is surplusage and should be disregarded.

CONCLUSION

It is therefore the opinion of this office that the state shall pay the costs of transporting boys to the reformatory who have been convicted of a felony; that the county shall pay such costs of transportation for all who have been convicted of a misdemeanor, and shall also pay the costs of transporting all boys sent to the reformatory as "delinquents".

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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