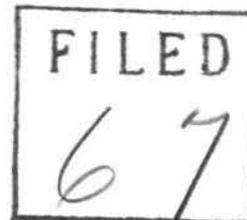


SHERIFFS: County Court may allow and pay claims of sheriffs for services rendered in juvenile court.

October 13, 1943



Honorable Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Mr. Niedner:

The Attorney-General wishes to acknowledge receipt of your letter of October 6, 1943, in which you request an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"The committee of auditors which has just completed auditing the books and records of St. Charles County have raised a question about whether it is lawful for the County Court to allow and pay Sheriff's fees for serving subpoenas, summons and warrants issued by the Circuit Clerk at the request of the Prosecuting Attorney in causes filed in the Juvenile Court. The Sheriff happens also to be the County Superintendent of Public Welfare and as such must attend Juvenile Court and do such acts as are provided by law to be the duties of the Superintendent of Public Welfare; however, I do not find among those duties the duty to serve writs of the kind above mentioned and I have felt that such writs issued by the Circuit Clerk were served by the Sheriff simply as Sheriff and not as Superintendent of Public Welfare.

"Would you please render us an opinion in accordance with the request made by the auditors as to whether the above type of fees are allowable."

The Superintendent of Public Welfare is appointed pursuant to the provisions of Section 9719, R. S. Mo. 1939. This section provides as follows:

"The county court in each county may in its discretion appoint a county superintendent of public welfare, and such assistants as it may deem necessary. Whenever the county court of any county has appointed a superintendent of public welfare such officer shall assume all the powers and duties now conferred by law upon the probation or parole officer of such county and shall assume all the powers and duties of the attendance officer in said county and all the powers and the duties of the attendance officer in any incorporated town or village having a population of more than 1,000 inhabitants, and no other or different probation or parole officer or attendance officer or officers shall be appointed by the judge of the juvenile court, by the county superintendent of public schools, or by the school board or any incorporated city, town or village school district or consolidated school district; Providing, however, that the provision of this section shall not apply to counties which now have or which shall hereafter have a population of more than 50,000 inhabitants."

It will be noted that the County Superintendent of Public Welfare "shall assume all the powers and duties now conferred by law upon the probation or parole officer of such county." The Laws of 1921, page 586 et seq., which provided for the appointment of a Superintendent of Public Welfare and also prescribed his powers and duties, which included those conferred on the probation officer, impliedly repealed Section 9708, R. S. Mo. 1939, providing for the appointment of a probation officer (*Poindexter v. Pettis County*, 246 S. W. 38, 295 Mo. 629); however, for some unaccountable reason the latter statute is still on the statute books. So, in order for us to arrive at a conclusion as to what the powers and duties of the Superintendent of Public Welfare are,

it is necessary for us to examine the statutes relative to the probation officer which are impliedly repealed. Consequently, we wish to call your attention to the provisions of Section 9710, R. S. Mo. 1939, which are:

"Whenever there is to be a child brought before the court under this law, it shall be the duty of the clerk of said court to so notify the probation officer in advance. It shall be the duty of the probation officer to make such investigation of the child as may be required by the court, to be present in court at the hearings of all cases, and to furnish to the court such information and assistance as the judge may require, and to take charge of any child before and after hearing, as may be directed by the court. Probation officers shall have all the powers of peace officers anywhere in the state for the purposes of this article."

It will be seen that probation officers shall have all the powers of peace officers anywhere in the State for the purposes of the article of the statutes. Under the provisions of Section 9719, supra, these powers automatically vest in the County Superintendent of Public Welfare. It will be further noted that the probation officer shall make investigations and be present at all hearings in juvenile court, which duties also automatically vest in the County Superintendent of Public Welfare. As a result of such provision we feel that the latter has authority to serve subpoenas issued by the Circuit Clerk to compel the attendance of witnesses in juvenile proceedings.

Section 9719, R. S. Mo. 1939, does not require the County Court to appoint a Superintendent of Public Welfare, but provides that it may do so, in its discretion. There are possibly many counties that do not have an officer of this kind and in that case there must be some officer having a like authority who can serve the subpoenas for the juvenile hearings. In view of the fact that the juvenile court is merely a part of the circuit court, we feel that the sheriff, who is an officer of the circuit court, is the officer having the authority to perform such duties. If the Legislature had intended that the

Superintendent of Public Welfare was to have exclusive authority to perform such duties, we feel that it would have made the appointment of such officer mandatory instead of discretionary.

Attention is next called to Section 9716, R. S. Mo. 1939, which prescribes the following:

"The court shall have power to devise and publish rules and regulate the procedure for cases coming within the provisions of this article, and for the conduct of all probation and other officers of the court in such cases, and such rules shall be enforced and construed beneficially for the remedial purposes embraced herein. The court may devise and cause to be printed for public use such forms for records and for the various petitions, orders, process and other papers in the cases coming under this article as shall meet the requirements thereof; and all the expenses incurred by the court in complying with the provisions of this article shall be a county charge."

As a result of the above statute, it appears to us that the expenses of the juvenile court proceedings are a county expense and consequently the county court is authorized to allow claims for expenses incurred in such proceedings.

Section 13411, R. S. Mo. 1939, sets up a schedule of fees to be allowed for certain services rendered by the sheriff. Under this section of the statutes the sheriff is allowed numerous fees for services which he renders. It will be noted that under Section 13413, R. S. Mo. 1939, the sheriffs and other officers are allowed certain fees for services rendered in criminal actions. However, it has been held that proceedings in a juvenile court are not criminal in their nature and therefore Section 13411, supra, will apply. See *State v. Buckner*, 254 S. W. 179.

Conclusion

Therefore, it is the opinion of this department that it is lawful for the County Court of St. Charles County to allow and pay sheriff's fees for his services in serving subpoenas and summons issued by the Circuit Court at the request of the Prosecuting Attorney in causes filed in the Juvenile Court.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG