

CRIMINAL COSTS: The State is only liable for the costs, including transportation to the Missouri Training School, in juvenile trials on conviction before a jury, plea of guilty, acquittal, or dismissal under the general criminal law, where the punishment is solely imprisonment in the state penitentiary.

November 10, 1941

Hon. Joe W. Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of November 1, 1941, which is as follows:

"We have a case here where the defendant was charged with the felony of grand larceny. He entered a plea of guilty to said charge and the court committed him to the Missouri Training School for Boys.

"Section 9004, R. S. Mo. 1939, would indicate the State would pay the costs of transporting the child to said School. Sec. 9698 defines a delinquent child as including a child under the age of seventeen years who violates any law of this state.

"State ex Rel. Shartel v. Trimble 333 Mo. 888 holds that a child proceeded against in juvenile court whether for misconduct or violation of a criminal statute, must be adjudged delinquent.

"Where a child pleads guilty to a charge of grand larceny, is adjudged delinquent and committed to the Missouri

Training School would the State pay the costs of transporting said child to said school."

We are herein enclosing an opinion rendered by this office on September 2, 1938, to the Honorable Forrest Smith, which held that the State is only liable for the costs in juvenile trials on conviction before a jury, plea of guilty, acquittal, or dismissal under the general criminal law, where the punishment is solely imprisonment in the state penitentiary. By that holding it was to the effect that the conviction must be under the general criminal law and the sentence upon a conviction must be originally in the penitentiary or the acquittal or dismissal under the general criminal law must be where the punishment is solely imprisonment in the state penitentiary. We believe the above opinion answers the larger part of your request. But, in answering the last paragraph of your request, referring to the payment of costs of transportation of the child to the Missouri Training School, we submit the following:

Section 9004, R. S. Mo. 1939, reads as follows:

"In all cases of conviction of felony, wherein the punishment is commitment to the Missouri training school for boys, the cost of the proceedings and of the delivery of such person to the Missouri training school for boys shall be paid by the state; and in all cases of misdemeanor, wherein the punishment is commitment to the Missouri training school for boys, the cost of the proceedings and of the delivery of such person to the Missouri training school for boys shall be paid by the county in which the conviction is had. The sheriff, marshal or other person charged with the delivery of any person to the Missouri training school for boys shall be allowed

the necessary traveling expenses of himself and such person, and a per diem of two dollars for the time actually occupied in taking such person to said Missouri training school for boys and in returning therefrom, to be paid by the state or county, as the case may be."

The language in the above section is unambiguous and does not call for a construction. It specifically states that in all cases of conviction of felony, where the punishment is commitment to the Missouri Training School for boys, the costs of the proceedings and the delivery of such person to the Missouri Training School for boys shall be paid by the State. It also provides that where the punishment in a misdemeanor case was a commitment to the Missouri Training School for boys, the costs of the delivery of such person to the Missouri Training School for boys shall be paid by the county in which the conviction is had.

It is very noticeable in Section 9004, the words "conviction of felony" is used. The conviction of felony should not be confused with delinquency for the reason that delinquency is more in the nature of a civil action and not a criminal action. The Supreme Court of this State in construing the juvenile law in the case of State v. Trimble, 63 S. W. (2d) 37, para. 2, said, l. c. 38:

"The Juvenile Act, article 8, chapter 125, R. S. Mo. 1929 (section 14136 et seq. (Mo. St. Ann. Sec. 14136 et seq.)), is a complete law within itself, dealing with minors under the age of seventeen years. The purpose of the Juvenile Law is not to convict minors of criminal acts, but to safeguard and reform children that may have erred and have been declared delinquent and to provide for children that may be declared neglected. For a full discussion of the purposes of juvenile

laws see Ex parte Januszekowski (C. C.) 196 F. 123; 31 C. J. 1101, Sec. 226. The Juvenile Act authorizes the juvenile judge, if he deems that a child is not a fit subject to be dealt with in the juvenile court, to dismiss the proceedings and order the child to be prosecuted under the general law. Section 14163, R. S. Mo. 1929 (Mo. St. Ann. Sec. 14163). A minor under the age of seventeen years cannot be convicted of a crime in a proceeding in a juvenile court, as the term 'conviction' is understood in law. State ex rel. v. Walker and Ex parte Bass, supra; State v. Naylor, 328 Mo. 335, 40 S. W. (2d) 1079, loc. cit. 1082 (6). The juvenile court can only adjudge a child a neglected child or a delinquent child. The two terms have a distinct and separate meaning under the Juvenile Act. A child may be of good character, and yet, through no fault of its own, be declared a neglected child. A delinquent child means one who has been guilty of violations of the law or is incorrigible, vicious, or immoral. Section 14136, R. S. Mo. 1929 (Mo. St. Ann. Sec. 14136); Ex parte Naccarat, 328 Mo. 722, 41 S. W. (2d) 176. If a child is proceeded against as a delinquent, the final judgment of the juvenile court, if against the child, can only be a judgment declaring it to be delinquent. It is immaterial whether the misconduct charged against the child, by the information, consists of violations of the criminal statutes or of conduct, though not violations of the law, which nevertheless renders the child incorrigible, vicious,

or immoral. In either case the judgment must be that the child is a delinquent. The juvenile court then has the authority to place the minor on probation or in some institution other than the penitentiary. Section 14151, R. S. Mo. 1929 (Mo. St. Ann. Sec. 14151); Ex parte Bass, supra; 31 C. J. page 1111, Sec. 245."

In the above citation the court specifically held that when a minor is convicted of delinquency it is not a conviction as generally understood in law. It also in the same paragraph held that a child may be convicted of delinquency by an information and the verdict should declare the child to be a delinquent. It also stated that it was immaterial whether the misconduct charged against the child by the information consisted of a violation of the criminal statutes or of conduct, though not a violation of the law. It held that in either case the judgment must be that the child is a delinquent, that procedure being a juvenile matter where the child is not tried under the general criminal statutes. We find no provision allowing a sheriff fees for the transportation of a child who has been adjudged delinquent. The only fee allowed for the transportation of a child to the Missouri Training School is when the child has been tried and convicted under the general criminal law. Section 9004, supra, contains clear and unambiguous language and there is nothing to construe. State ex. rel. Jacobsmeier v. Thatcher, 92 S. W. (2d) 640, 338 Mo. 622.

CONCLUSION.

In view of the above authorities it is the opinion of this department that where a child pleads guilty under the general criminal law to a charge of grand larceny and is committed to the Missouri Training School the State must pay the costs of transporting the child to said school, but if the child pleads guilty to an information not under the

November 10, 1941

general criminal law, but under the juvenile law which charges him with delinquency, even though the information contains a charge under the general criminal law, the State is not liable for the costs of transporting said child to the Missouri Training School.

It is further the opinion of this department that the State is liable for the costs of transporting a child to the Missouri Training School where he is convicted before a jury or pleads guilty on a criminal charge, is sentenced to the penitentiary and his sentence commuted to the Missouri Training School; or, if he is acquitted or the charge dismissed under the general criminal law where the punishment is solely imprisonment in the State penitentiary.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

WJB:CP