

OPINION NO. 69-110

Syllabus:

When the court deems it necessary to appoint counsel for a juvenile, pursuant to Section 2151.351, Revised Code, such counsel's services shall be paid for by the county as is stated therein.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: Paul W. Brown, Attorney General, September 4, 1969

You have requested my opinion and answer to two questions stated as follows:

"In Juvenile Court cases for dependency or neglect where permanent custody is the issue, may the Court assign lawyers for indigent dependents and tax their fees as part of the Court costs pursuant to Section 2151.351 - RC, and then obtain reimbursement from the State?"

"In Juvenile Court cases where attorneys are appointed in delinquency cases, may their fees also be taxed as part of the cost when reimbursed by the State?"

Section 2151.351, Revised Code, mentioned in your inquiry reads as follows:

"When a child is brought before the juvenile court for hearing to determine whether or not such child is delinquent, dependent, neglected, or a juvenile traffic offender in cases where it appears that such juvenile traffic offender may be adjudged delinquent, if he and his parents are indigent, the court may assign counsel to such child and his parents. Such counsel shall not be a partner in the practice of law of any attorney representing any interest adverse to the child.

"Counsel so assigned to represent a child and his parents shall be paid for their services by the county, and shall receive therefor such compensation as the juvenile court may approve, not exceeding three hundred dollars and expen-

ses as the trial court may approve.

"The fees and expenses approved by the court under this section shall be taxed as part of the costs."

(Emphasis added.)

Section 2949.18, Revised Code, provides for reimbursement by the state for the cost of prosecution and the transportation of a felon to a penal institution. It states that this reimbursement is made only when a felon is delivered; and first requires the issuance of an execution against the felon's property pursuant to Section 2949.15, Revised Code.

Section 2949.19, Revised Code, has similar provisions and both sections are quoted as follows:

Section 2949.18, Revised Code:

"When the clerk of the court of common pleas certifies on a cost bill that execution was issued under section 2949.15 of the Revised Code, and returned by the sheriff 'no goods, chattels, lands, or tenements found whereon to levy,' the person in charge of the penal institution to which the convicted felon was sentenced shall certify thereon the date on which the prisoner was received at the institution and the fees for transportation, whereupon the auditor of state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of state for such amount as he finds to be correct." (Emphasis added.)

Section 2949.19, Revised Code:

"Upon the return of the writ against a convict issued under section 2949.15 of the Revised Code, if an amount of money has not been made sufficient for the payment of costs of conviction and no additional property is found whereon to levy, the clerk of court of common pleas shall so certify to the auditor of state, under the seal of the court, with a statement of the total amount of costs, the amount paid, and the amount remaining unpaid. Only one statement of costs shall be certified to the auditor of state in each case, and such statement of costs shall include all the counts contained in a single indictment

and payment requested for one count only and no additional costs shall be allowed where there are additional counts contained in the same indictment. Such unpaid amount as the auditor of state finds to be correct shall be paid by the state to the order of such clerk."

(Emphasis added.)

Section 2949.15, Revised Code, mentioned in both of the above sections and to both of which it is a prerequisite, applies to felonies only. It reads as follows:

"The clerk of the court of common pleas in which a person was convicted of a felony shall forthwith issue to the sheriff of the county in which the indictment was found, and to the sheriff of any other county in which the convict has property, executions against his property for fines and the costs of prosecution, which shall be served and returned within ten days, with the proceedings of such sheriff or the want of property upon which to levy, indorsed thereon.

"When a levy is made upon property under such execution, a writ shall forthwith be issued by the clerk for the sale thereof, and such sheriff shall sell the property and make return thereof, and after paying the cost of conviction, execution, and sale, pay the balance to the person authorized to receive it."

(Emphasis added.)

In the case of In re Agler, 19 Ohio St. 2d 70, decided July 9, 1969, the first branch of the syllabus reads as follows:

"1. In order to sustain commitment of a juvenile offender to a state institution in a delinquency proceeding, where such commitment will deprive the child of his liberty, the alleged delinquent must have been afforded representation by counsel, appointed at state expense in case of indigency. (In re Gault, 387 U.S. 1. Section 2151.351, Revised Code. Paragraph two of the syllabus of Cope v. Campbell, 175 Ohio St. 475, overruled.)"

It is my opinion that the court expressed the term "state expense" generically and did not intend any amendment to Section 2151.351, Revised Code, which specifically states that the services of counsel shall be paid for by the county.

The General Assembly has not yet assumed for the state the expense of delinquency proceedings. It has permitted the payment of costs only in felony cases. It has not permitted the payment of costs in other criminal cases. The question at hand does not involve criminal prosecution as is apparent in reading the pertinent part of Section 2151.35, Revised Code:

"The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. * * *" (Emphasis added.)

It is, therefore my opinion and you are advised that when the court deems it necessary to appoint counsel for a juvenile, pursuant to Section 2151.351, Revised Code, such counsel's services shall be paid for by the county as is stated therein.