



STATE OF KANSAS

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January 10, 1986

ATTORNEY GENERAL OPINION NO. 86- 3

Perry Murray
Thomas County Attorney
P.O. Box 554
Colby, Kansas 67701

Re: Infants--Kansas Code for Care of Children--Post
Adjudicatory Proceedings; Duties of County Attorney

Synopsis: A county attorney is required to file the appropriate pleadings for, and appear in, proceedings following an adjudication that a child is in need of care pursuant to the Kansas Code for Care of Children, K.S.A. 1984 Supp. 38-1501 et seq. and K.S.A. 1984 Supp. 19-702. In that these services are a statutory duty, a county attorney is entitled to no additional compensation for such services. Cited herein: K.S.A. 1984 Supp. 19-702; 38-1502(e), as amended by L. 1985, ch. 144, §1 and ch. 145, §3; 38-1510; 38-1529; 38-1562; 38-1581.

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Dear Mr. Murray:

As Thomas County Attorney, you request our opinion regarding the duties of a county attorney in the post-adjudicatory stages of a "child in need of care" case. Specifically, you inquire whether a county attorney is required to participate in dispositional and termination proceedings once a child has been adjudicated a child

in need of care pursuant to the Kansas Code for Care of Children. K.S.A. 1984 Supp. 38-1501 et seq., and amendments (hereafter referred to as "the Code.")

Relevant statutes to your inquiry are K.S.A. 1984 Supp. 38-1562 and 38-1581, which provide respectively as follows:

"(a) At any time after a child has been adjudicated to be a child in need of care and prior to disposition, the judge shall permit any interested parties to be heard as to proposals for appropriate disposition of the case. . . ." K.S.A. 1984 Supp. 38-1562(a);

and

"(a) Either in the petition filed under this code or in a motion made in proceedings under this code, any interested party may request that the parental rights of either or both parents be terminated. . . ." K.S.A. 1984 Supp. 38-1581(a).

Each of these statutes allow "any interested party" to participate in these proceedings. K.S.A. 1984 Supp. 38-1502(e), as amended by L. 1985, ch. 144, §1 and ch. 145, §3, defines "interested party" as "the state, the petitioner, the child, any parent and any person found to be an interested party pursuant to K.S.A. 1984 Supp. 38-1541 and amendments thereto" (emphasis added). Thus, the state, as an interested party under the code, may file the necessary pleadings and make appearances required for dispositional and termination proceedings.

K.S.A. 1984 Supp. 19-702(a) provides that "it shall be the duty of the county attorney to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested," (emphasis added). The only exception to this appears in K.S.A. 1984 Supp. 19-702(b), which provides that the county attorney shall not be required to prosecute or defend an action relating to the operation of the county hospital. K.S.A. 1984 Supp. 38-1510 makes it the duty of the county attorney to prepare and file child in need of care petitions, as well as appearing at the hearing and assisting the court in making an adjudication.

K.S.A. 1984 Supp. 19-702(a), when read in conjunction with K.S.A. 1984 Supp. 38-1502(e), as amended, 38-1510, 38-1562(a) and 38-1581(a), clearly makes it the duty of a county attorney

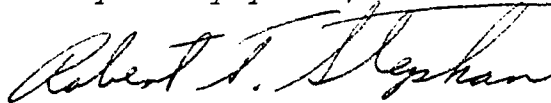
to appear, on behalf of the state, in a dispositional hearing or action for termination of parental rights taken pursuant to the Code. This conclusion is logical in that county attorneys acquire the pertinent information from the adjudicatory stage to competently handle the post-adjudicatory proceedings. See K.S.A. 1984 Supp. 38-1510. Of course, a county attorney does have prosecutorial discretion in determining whether it is appropriate to institute an action, which accounts for the permissive language used throughout the Code.

Relative to the issue of compensation, the Kansas Supreme Court has stated that:

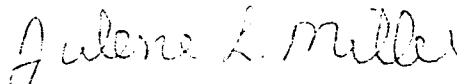
". . . the rule with regard to compensation unquestionably is, that whenever the law requires the county attorney to perform any particular service or duty he cannot receive or recover any compensation for the performance of such service or duty in addition to his salary and the specific fees allowed by statute. (Citation omitted.) His salary is intended to be sufficient compensation for the performance of all services and duties required by law, except where the statute otherwise specifically provides for other or additional compensation." Commissioners of Leavenworth v. Brewer, 9 Kan. 307, 317, 318 (1872).

In that it is the statutory duty of a county attorney to appear in and prosecute these post-adjudicatory actions, there is no additional compensation involved for these services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Assistant Attorney General