



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 17, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 99

J. Michael Gear  
Kiowa County Attorney  
211 E. Florida  
Greensburg, Kansas 67054

Re: Minors -- Kansas Juvenile Offenders Code -- Right to an Attorney; Docket Fee and Expenses; Recovery of Attorney Fees by County for Parents of Juvenile

Synopsis: K.S.A. 38-1601 et seq., the Kansas juvenile offenders code, permits a court to assess the expense of a court appointed attorney against the parents of a juvenile charged under that code. However, such an assessment is discretionary, and must be made by the court in accordance with due process and jurisdictional requirements, and should consider the financial resources of the parents. Cited herein: K.S.A. 38-1601; 38-1606; 38-1613; 38-1626.

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Dear Mr. Gear:

As Kiowa County Attorney, you request our opinion on the legality of the county seeking reimbursement from the parents of a minor for attorney fees arising out of a court appointed attorney representing a juvenile offender.

K.S.A. 38-1601 et seq. establish the Kansas juvenile offenders code. K.S.A. 38-1606 provides for a court appointed attorney:

"A juvenile charged under this code is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parents of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile or parent, or both, as part of the expenses of the case.

"(b) Continuation of representation. An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

"(c) Attorney's fees. Attorneys appointed hereunder shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1613."  
(Emphasis added.)

Thus, K.S.A. 38-1606(a) permits the expense of a court appointed attorney to be assessed to the parent as part of the expense of the case. This is in keeping with general common law principles concerning the duty of parents to provide necessities for their children. See 59 Am.Jur.2d Parent and Child § 41 (1987).

K.S.A. 38-1613 discusses assessment of expenses incurred for proceedings under the juvenile offenders code:

"(b) Expenses. The expense for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court

for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

"(c) Assessment of docket fee and expenses. (1) Docket fee. The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and may be assessed against the complaining witness, the person initiating the prosecution, the juvenile offender or the parent of the juvenile offender. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362 and amendments thereto.

"(2) Waiver and assessment. Expenses may be waived or assessed against the complaining witness, the person initiating the prosecution, the juvenile offender or a parent of the juvenile offender. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. . . ." (Emphasis added).

Thus, expenses shall be initially paid by the board of county commissioners from the county general fund. However, a court ordered assessment of expenses against the parent of a juvenile offender may be ordered by the court, and the county may recover funds previously paid from the county general fund.

K.S.A. 38-1626 requires that the parents or parent having custody of the alleged juvenile offender be served with a summons and a copy of the complaint. The suggested summons form set forth at K.S.A. 38-1626 contains notification to the parent that the expense of the court appointed attorney may be required to be paid by the parent:

"The juvenile will be required to admit or deny the statements in the complaint. You have the right to hire an attorney to represent the above juvenile. If you do not hire an attorney, the court will appoint an attorney for the juvenile. The juvenile, parent or other person having legal custody of the juvenile may

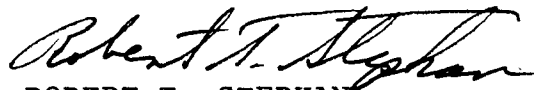
be required to repay the court for the expense of the appointed attorney."  
(Emphasis added).


The parents of a juvenile offender are thus notified that the issue of payment of court appointed attorney expenses may come before the court and may be ordered by the court.

It is amply apparent that the juvenile offenders code contemplates a court order requiring the parents of a juvenile offender to pay the expense of a court appointed attorney. However, such an assessment is discretionary with the court and must be made in accordance with due process and jurisdictional requirements. Moreover, in making its decision, the court should consider Simmons v. James, 467 F.Supp. 1068 (D.Kan. 1979), aff'd Olson v. James, 603 F.2d 150 (10th Cir. 1979). This case required the court to consider ability to pay court appointed attorney fees: "In order for a recoupment statute to be constitutional and not have a chilling effect on the availability of counsel, the court must be required to take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose prior to ordering the defendant to reimbursement all or a part of the cost for his or her representation." 467 F.Supp. at 1073. Although this case dealt with representation on a criminal matter, we believe it prudent to consider the facts discussed in Simmons in juvenile offender proceedings.

In summary, K.S.A. 38-1601 et seq. permits, but does not require, a court to assess the expense of a court appointed attorney against the parents of a juvenile charged under the juvenile offender code. However, such an assessment must consider due process and jurisdictional limitations, and the court should review the financial resources of the parents.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Theresa Marcel Nuckolls  
Assistant Attorney General