S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 20, 2001

Opinion No. 01-130

Authority of Juvenile Court to Detain Child on Pending Delinquency Charges

QUESTIONS

1. May a juvenile court order the Department of Children's Services to detain, hold in detention or hold securely a child who is in the Department's custody as a dependent and neglected, unruly or delinquent child and who has pending delinquent charges?

2. If a juvenile court detains such child pre-adjudication, may the cost of pre-adjudicatory detention be taxed to the Department of Children's Services as a "parent or other person legally obligated to care for and support the child" under Tenn. Code Ann. § 37-1-150(d)?

OPINIONS

1. No. Absent a preliminary hearing and finding of probable cause as required by Tenn. Code Ann. § 37-1-114, a juvenile court may not order the Department of Children's Services to detain or otherwise securely hold a child currently in the Department's custody as a dependent and neglected, unruly or delinquent child.

2. No. A juvenile court lacks statutory authority to tax the cost of pre-adjudicatory detention to the Department of Children's Services.

ANALYSIS

1. It is well settled that children, as well as adults, are entitled to the protections afforded by the Constitution. *Doe v. Norris*, 751 S.W.2d 834, 839 (Tenn. 1988). This is especially true when a child's interest in physical freedom is threatened by the state. A juvenile's interest in physical freedom, however, is modified by the fact that, unlike adults, juveniles are always in some form of custody. Thus, the state, acting in its *parens patriae* capacity, may assume control over a child if parental control falters. In imposing restrictions upon a juvenile under the state's *parens patriae* interest, due process requires such

restrictions to serve a "legitimate regulatory purpose." *Id*.

Under the provisions of Tenn. Code Ann. § 37-1-114, juveniles are provided with adequate due process protections. Accordingly, a child taken into custody shall not be detained or placed in shelter care prior to an adjudicatory hearing unless a juvenile court determines there is probable cause to believe the child has committed a delinquent offense and there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others. Tenn. Code Ann. § 37-1-114.

The status of having previously been found to be a dependent and neglected child and placed in the custody of the Department of Children's Services does not remove the due process protections required by Tenn. Code Ann. § 37-1-114. On the contrary, unless a child found to be dependent and neglected is also found to be delinquent, such child may not be committed to or confined in an institution or facility designed or operated for the benefit of delinquent children. Tenn. Code Ann. § 37-1-130(b). *See also Doe v. Norris, supra* (if conditions of confinement for children not adjudicated delinquent amount to punishment, confinement is "per se" illegitimate). Therefore, it is our opinion that a juvenile court may not order the Department of Children's Services to detain or otherwise hold securely a child who has pending delinquency charges and who is currently in the Department's custody as a dependent and neglected child without first complying with the requirements of Tenn. Code Ann. § 37-1-114 to determine whether there is probable cause to believe such child has committed the delinquent act with which the child is charged.

2. As provided in Tenn. Code Ann. § 37-1-150(a)(4), the cost of any pre-adjudicatory placement of a child pursuant to Tenn. Code Ann. § 37-1-114 may be a charge upon the funds of a county. After due notice and opportunity to be heard, such cost may be taxed to the parent or other persons legally obligated to care for and support the child. Tenn. Code Ann. § 37-1-150(d). Such cost, however, may not be taxed to the Department of Children's Services even if the child was in the care and custody of the Department.

It is well established that the right to collect costs from the state depends wholly on statute. *State ex rel. Chanaberry v. Stooksbury*, 176 Tenn. 687, 689, 145 S.W.2d 775, 776 (1940). A statute which provides that a court may assess costs against the state is in derogation of the state's sovereignty and must be strictly construed. *Matter of Harris*, 849 S.W.2d 334, 336 (Tenn. 1993). In this case, Tenn. Code Ann. § 37-1-150 does not specifically allow these costs to be taxed against the state. Rather, this statute specifically provides that the cost of the care or treatment of any child which is ordered by the Court shall be paid by the state only when specifically authorized by this title or other provisions of law. Tenn. Code Ann. § 37-1-150(g). Therefore, it is our opinion that a juvenile court lacks authority to tax the cost of pre-adjudicatory detention to the Department of Children's Services.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DIANNE STAMEY DYCUS
Deputy Attorney General

Requested by:

George W. Hattaway
Commissioner
Department of Children's Services
7th Floor, Cordell Hull Building
436 Sixth Avenue North
Nashville, TN 37243-1290