

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

December 14, 2009

Opinion No. 09-186

Collections by Juvenile and General Sessions Courts; Conflicts of Interest

QUESTIONS

1. Does a juvenile court have the authority to collect restitution, fines, and court costs from an offender over the age of nineteen, who previously committed a delinquent offense as a juvenile?
2. Does a juvenile court or a general sessions court have the authority to collect restitution, fines, and court costs from an adult offender, who was convicted of a misdemeanor crime more than 11 months and 29 days ago?
3. Is there a time limit for a juvenile court to collect court costs?
4. Can a youth services officer notarize petitions for filing in juvenile court?
5.
 - a. Can a youth services officer, who is employed by the county and under the supervision of a juvenile court judge, contract to teach classes to juvenile offenders for a private misdemeanor probation services company that supervises juvenile offenders?
 - b. Can a youth services officer, who is employed by a county and under the supervision of a juvenile court judge, contract to teach classes to adult offenders for a private misdemeanor probation services company that supervises adult offenders?
6. Can a juvenile court judge issue a search warrant in a criminal investigation, and then preside over a custody hearing involving the suspect who was served with the search warrant?

OPINIONS

1. Yes.
2. A juvenile court has no authority to collect restitution, fines and court costs from adult misdemeanants; a general sessions court can collect restitution, fines and court costs even after service of sentence.
3. No.

4. A youth services officer is not authorized by statute to verify petitions, but, if the youth services officer is also a notary public, he or she may notarize petitions for filing in juvenile court.

5. a. No.

b. Yes.

6. Yes.

ANALYSIS

1. The question posed involves a scenario in which a former juvenile offender, now an adult, appears in a court on another matter unrelated to the juvenile offense, and the clerk's office discovers that the offender has failed to pay restitution, fines, and court costs ordered in a previous, juvenile matter.

Restitution ordered in juvenile court can be collected even after an offender reaches the age of nineteen. However, the juvenile court cannot enforce restitution payments after the offender's nineteenth birthday unless the restitution recipient converts the remaining payments into a civil judgment. Tenn. Code Ann. § 37-1-131(b)(2)(A). The restitution recipient can petition the juvenile court, which has the authority to convert the remaining balance of restitution to a civil judgment. Tenn. Code Ann. § 37-1-131(b). "[P]ayments shall be continued to be made under the specific payment schedule ordered by the juvenile court until the judgment has been satisfied." Tenn. Code Ann. § 37-1-131(b)(2)(B). "The restitution recipient shall file a certified copy of the juvenile court's restitution order with any court having jurisdiction over the total amount of restitution ordered." Tenn. Code Ann. § 37-1-131(b)(3). The judgment entered shall remain in effect and enforceable for a period of ten years from the date of entry. Tenn. Code Ann. § 37-1-131(b)(5).

A juvenile court retains the authority to collect fines and court costs even after an offender has reached the age of nineteen. Hawkins County has created a special juvenile court as permitted by Tenn. Code Ann. § 37-1-205. 1982 Private Acts, Ch. 304 ("Private Act"). Section 4 of the Private Act provides that the Hawkins County Circuit Court Clerk shall serve as the clerk of the Hawkins County Juvenile Court. According to Tenn. Code Ann. § 37-1-211(a), "[c]lerks of such special juvenile courts shall . . . have all the duties, authorities, and obligations provided by law for clerks of other courts of record of this state . . ." The Private Act also recognizes the juvenile court clerk's duties, authority and obligations under its juvenile court system amendments to be those listed in Tenn. Code Ann. § 37-1-211(a).

Nothing in either Title 37 of Tennessee Code Annotated or the Private Act limits the time within which the juvenile court clerk can collect outstanding fines or court costs after an offender reaches the age of nineteen. However, because Tenn. Code Ann. § 37-1-211 gives a juvenile court clerk the same authority as other clerks of courts, Tenn. Code Ann. §40-24-105, which governs the courts' duties to collect costs under the criminal code, provides guidance. If a

county's fines or court costs have been in default for at least six months, the district attorney general or criminal or general sessions court clerk may retain an agent to collect the unpaid fines and costs. Tenn. Code Ann. § 40-24-105(c).

2. The question posed involves a scenario in which a previously-convicted defendant appears before the juvenile court or general sessions court on a new matter after having completed the prior sentence, and the clerk's office discovers that the offender never satisfied the restitution, fines, and court costs from the prior offense.

According to Tenn. Code Ann. § 37-1-102(b)(3), an adult is any person eighteen years of age or older. Except for the limited circumstances listed in Tenn. Code Ann. § 37-1-102(b)(4)(B), a juvenile court does not have jurisdiction over anyone over the age of eighteen (18). Therefore, a juvenile court cannot collect restitution, fines, and court costs from an adult offender unless the adult offender was assessed the restitution, fines, and court costs as a juvenile, in which case the analysis of question 1 above applies.

The general sessions court may continue to collect court costs, fines, and restitution even after the defendant has served his or her sentence. The ability to collect restitution does not end with the offender's service of sentence. When ordering an offender to pay restitution to the victim as a condition of probation, a court may not extend the payment terms beyond the term of the sentence, but, if the offender has not paid the restitution by the time he or she completes service of the sentence, the victim or the victim's beneficiary may convert the unpaid restitution into a civil judgment that shall remain in effect for ten years from the date of entry of the judgment. Tenn. Code Ann. § 40-35-304(a), (c) and (h)(7).

Similarly, Tenn. Code Ann. § 40-24-105(a) provides that fines and court costs may be collected in the same manner as judgments in civil actions. The statute makes other specific provisions for the collection of costs and fines. If fines or court costs have not been paid within six months, the district attorney general or court clerk may retain an agent to collect. Tenn. Code Ann. § 40-24-105(c). The court may also choose to invoke its contempt power in order to enforce collection of delinquent fines or costs. *Id.* The statute places no time limit on the collection of delinquent fines and costs.

3. The question posed involves a scenario in which an offender appears before the juvenile court, and the clerk's office discovers that the offender has failed to pay court costs ordered in a previous matter.

As explained in response to question 1 above, Hawkins County has created a special juvenile court as permitted by Tenn. Code Ann. § 37-1-205. 1982 Private Acts, Ch. 304 ("Private Acts"). Section 4 of the Private Act provides that the Hawkins County Circuit Court Clerk shall serve as the clerk of the Hawkins County Juvenile Court. According to Tenn. Code Ann. § 37-1-211(a), "[c]lerks of such special juvenile courts shall . . . have all the duties, authorities, and obligations provided by law for clerks of other courts of record of this state . . ."

Nothing in either Title 37 of Tennessee Code Annotated or the Private Act limits the time within which the juvenile court clerk can collect outstanding court costs. However, because

Tenn. Code Ann. § 37-1-211 gives a juvenile court clerk the same authority as other clerks of courts, Tenn. Code Ann. §40-24-105, which governs the courts' duties to collect costs under the criminal code, provides guidance. If court costs have been in default for at least six months, the district attorney general or criminal or general sessions court clerk may retain an agent to collect the unpaid fines and costs. Tenn. Code Ann. § 40-24-105(c).

4. This question is whether it is appropriate for a youth services officer to verify a petition filed in juvenile court, assuming that the youth services officer has been authorized by the juvenile court to verify petitions pursuant to Tenn. Code Ann. § 37-1-106(b)(7).

All petitions commencing proceedings in juvenile court must be verified, which means that the information in the petitions must be confirmed or substantiated by oath. Tenn. Code Ann. § 37-1-120 (2005); Black's Law Dictionary 1400 (5th ed. 1979). The legislature has specifically designated certain categories of persons who are qualified to administer oaths. These categories include state court judges, Tenn. Code Ann. § 16-1-102(5); court clerks, Tenn. Code Ann. § 18-1-105(a); and Tennessee notaries public, Tenn. Code Ann. § 8-16-112 (2008 Supp.). The statute setting out the duties of youth services officers, Tenn. Code Ann. § 37-1-106(b), does not authorize youth services officers to administer oaths. Even though Tenn. Code Ann. § 37-1-106 is not an exclusive listing and § 37-1-106(7) allows a juvenile court to order the officer to perform other functions, since the statute does not specifically authorize the taking of oaths, unless a youth services officer is a notary public, he or she has no authority to verify petitions filed in juvenile court.

5. The question posed involves a scenario in which a youth services officer, who was previously employed with a private misdemeanor probation services company that supervises juvenile and adult offenders, is now offered the opportunity to teach classes to adult and juvenile offenders for the private company, although the youth services officer is employed by the county.

As previously stated, Tenn. Code. Ann. § 37-1-106 establishes a youth services officer's duties. There is no statute or rule that precludes a youth services officer from also maintaining employment with a private entity. However, a youth services officer's employment with a private entity should not include a private agency to which the youth services officer makes referrals in his or her official capacity. Given that the private agency and the youth services officer might benefit from the referral, the youth services officer could have a conflict of interest in making such a referral which, at the very least, would create an appearance of impropriety. Tenn. Code Ann. §§ 37-1-106(5), 37-1-105.

The youth services officer does not make referrals to public or private agencies in cases involving adults. Therefore, there is no concern of a conflict of interest or the appearance of impropriety under the scenario presented because the private company and the youth services officer do not directly benefit from the youth services officer's employment as a youth services officer.

6. The question posed involves a typical scenario in which a juvenile court judge issues a search warrant for narcotics. If children reside where narcotics are found at the location

of the search, the judge who issued the search warrant then presides over a custody hearing involving the suspect/parent.

Tenn. R. Crim. P. 41(a) provides that any impartial magistrate may issue a search warrant where the property sought is located in that county. A juvenile court judge is a magistrate and can issue warrants. Tenn. Code Ann. § 40-1-106. According to Tenn. Code Ann. § 37-1-103(a)(1), the juvenile court has exclusive original jurisdiction to determine custody involving a dependent and neglected child. The mere fact that a juvenile court judge makes a probable cause determination for a search warrant does not alone disqualify the judge from later presiding over an evidentiary hearing where custody is determined based upon separate findings of fact and conclusions of law made by the judge. If, however, the judge is unsure of his or her ability to be impartial and preside over such a hearing, the judge has the discretion to recuse himself or herself. Tenn. R. Sup. Ct. 10, Code of Judicial Conduct, Canon 3.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

RACHEL WEST HARMON
Assistant Attorney General

Requested by:

Honorable James F. Taylor
Hawkins County Juvenile Judge
110 East Main Street
Courthouse Annex, Room 302
Rogersville, Tennessee 37857