

STATE PROBATION DEPARTMENT: Whether duties of probation officer may be referred to some other agency.
JUVENILE COURTS: Construction of 1941 Act referring to appointment of probation officers.

August 1, 1941.

Mrs. Emory Scholl,
 Director of Probation,
 State Probation Department,
 Indianapolis, Indiana.

Dear Madam:

I have before me your request for an official opinion relative to the provisions of the new Juvenile Court Act of 1941. The question which you wish to have answered is:

“Could the duties of a probation officer be referred to some other agency such as the Welfare Department?”

Before answering this question, I believe that it should be pointed out that the new law, in making provision for the appointment of probation officers, uses language which makes it mandatory for judges of courts having juvenile jurisdiction to appoint at least one salaried probation officer whose salary is to be fixed within the limits defined by the new Act. In Section 20 of the Act, it will be noted, the word “shall” is used wherever provision for appointment of probation officers is made. This admits of no other construction than that it is mandatory for juvenile courts to make such appointments. The word “shall” is used, also, in providing for annual salaries to be paid such officers for their services. Hence, it is my opinion that hereafter all courts having juvenile jurisdiction must appoint at least one salaried probation officer.

In the same Section of the Act, immediately after the provision for appointment of probation officers in counties having a separate juvenile court, the following appears:

“* * * Probation officers and supervising probation officers who are to receive salaries shall be appointed from eligible lists secured through competitive examinations as provided by law. * * *” (Acts 1941, p. 915.)

Although the above language is not used elsewhere in said Section 20 where provisions are made for probation officers in

counties not having a separate juvenile court, it is my opinion that it is intended to apply to all probation officers so as to provide for trained personnel in all juvenile courts throughout the state.

It is apparent, therefore, that it was the intent of the legislature to require the duties of probation officer to be discharged by persons chosen from eligibility lists of the Probation Department and to require that such persons receive a salary, thus making their office lucrative.

It is my opinion that there is a clear legislative intent to place matters concerning juvenile probation in the hands of specially chosen Probation Officers who are qualified to deal with such problems. While there is nothing in the Act which would prevent a member of the County Department of Public Welfare from accepting an appointment as Probation Officer, provided he or she has met the necessary eligibility requirements, it is my opinion that such acceptance would operate as a resignation from office in the Welfare Department. I refer you to an opinion given by this office on April 20, 1936, dealing with this question, holding that, since both offices are lucrative, a County Director of Public Welfare may not serve as Probation Officer and remain County Director of Public Welfare. There has not been such change in the law as to render this opinion inoperative, and it is still applicable.

Proceeding now to your question, the answer is in the negative. The duties of Probation Officer were intended by the Legislature to be discharged by specially appointed Probation Officers, separate and apart from the Departments of Public Welfare. As stated before, appointments of members of such Departments may be made, but Article II, Section 9 of the Constitution of Indiana prohibits such appointees from holding both offices at the same time. In view of the foregoing, it is my opinion that the duties of probation officer cannot be transferred to the County Department of Public Welfare, as such.