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OFFICIAL OPINION NO. 14

June 16, 1970

Hon. Charles E. Bosma
95 South 17th Avenue
Beech Grove, Indiana 46107

Dear Senator Bosma:

This is in response to your request for my Official Opinion concerning whether two Acts passed by the 1969 Indiana General Assembly apply to the Juvenile Courts of the State.

One of the Acts in question is Acts of 1969, Ch. 229, Sec. 1, as found in Burns' (1969 Supp.), Section 2-3011, which is entitled "AN ACT concerning fees in certain civil cases." The Act reads in part, as follows:

"Whenever the presiding judge in the course of any court proceeding orders the plaintiff or the defendant in such proceeding to make a payment or payments for the support and maintenance of the other party to such proceeding, or for the support and maintenance of a minor child or children, the judge shall assess a fee against such person, in addition to such payment or payments, in an amount not to exceed the sum of ten dollars [\$10.00] *per year* which sum may be collected by contempt proceedings." (My emphasis)

The second Act which is in question is Acts of 1969, Ch. 232, Sec. 8, as found in Burns' (1969 Supp.), Section 49-1305d, which reads, in part, as follows:

"In any cause, action, or proceeding brought in any circuit, superior, probate, juvenile, or criminal court, the clerk shall tax, charge, and collect a judicial fee of six dollars [\$6.00] in addition to all other fees now or hereafter provided by law; Provided, That no such fee shall be taxed in those cases brought to adjudge a child delinquent, dependent, or neglected * * *"

ANALYSIS

It is evident from the language of Burns' 2-3011, *supra*, that the judge of *any* court who orders the plaintiff or the

defendant to make payment for the support and maintenance of a minor child or children or for the support and maintenance of the other party to a proceeding, shall also assess a fee, which is not to exceed the sum of ten dollars [\$10.00] per year. The title to this Act indicates that the Act is to cover fees assessed in civil cases.

However, the fee assessed in Burns' 49-1305d, *supra*, would apply to actions brought under any statute which provides punishment for *adults* who are responsible for neglect or cruelty to a child. Examples of such statutes are Burns' 9-2809, 10-815 and 10-816.

Both Acts in question would apply to proceedings brought in juvenile court under the following statutory authority:

Burns' 3-623. "It is the obligation of the state of Indiana to provide proper legal procedures that will enable children born out of wedlock to have proper care, maintenance, education, protections, support and opportunities the same as children born in wedlock; and it [is] the purpose of this act [§§ 3-623—3-655] to establish procedures that will enable such children to have such rights and privileges. [Acts 1941, ch. 112, § 1, p. 301.]"

Burns' 3-625. "The mother may recover from the father a reasonable share of the necessary support and care of the child, including necessary maintenance, medical care, education and the child's funeral expenses in the event of the death of the child. [Acts 1941, ch. 112, § 3, p. 301.]"

Burns' 3-632. "*The jurisdiction to hear and determine all actions brought pursuant to Article 2 of Part II of this act is hereby conferred upon the several courts of the state having juvenile jurisdiction in the respective counties * * ** [Acts 1941, ch. 112, § 10, p. 301.]" (My emphasis)

Burns' 3-641. "If the hearing be had with a jury, the verdict of the jury shall state only that the jury finds in favor of the petitioner, or the defendant as the case may be. If the verdict or finding be against

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the defendant, the court shall enter a judgment against him, and make an order which shall make adequate provision for the support of the child * * * [Acts 1941, ch. 112, § 19, p. 301; 1955, ch. 186, § 1, p. 483.]”

Section 49-1305d, *supra*, would apply to paternity statutes, because such statutes require a cause, act, or proceeding which in no way involved adjudging a child delinquent, dependent, or neglected. Therefore, the six dollar (\$6.00) fee required by the statute should be charged and collected in that case.

Section 2-3011 would likewise apply to paternity statutes because the statutes require the defendant to pay for the support and maintenance of a minor, and the ten dollar (\$10.00) fee should be charged and collected.

It must be understood that the statutes cited above are only examples of cases where the two acts of the 1969 Indiana General Assembly are applicable to the Juvenile Court of Marion County and other juvenile courts within the state. They are not cited as the exclusive instances of such application.

CONCLUSION

It is, therefore, my opinion that Burns' 2-3011, *supra*, assesses a maximum annual court fee of \$10.00 only in civil cases when a person is ordered to make support or maintenance payments for a child or another party.

In criminal cases—except those which adjudge a child delinquent, dependent, or neglected—Burns' 49-1305d, *supra*, assesses a \$6.00 court fee in addition to all the other presently applicable fees.