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OAG 4-00

The Honorable Chuck Chvala
Senate Majority Leader
211 South, State Capitol
Madison, WI 53702

Dear Senator Chvala:

The Senate Committee on Organization asks whether municipal courts have authority to order the parents of a juvenile to pay a forfeiture imposed on their child for violating a non-traffic municipal ordinance. I have concluded that they do.

In addition to the inherent powers possessed by all courts to enable them to perform their judicial functions, municipal courts have other powers conferred by statute. *See City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 747-48, 595 N.W.2d 635 (1999); *State ex rel. Lang v. Municipal Justice Court*, 50 Wis. 2d 21, 25, 183 N.W.2d 43 (1971). These additional powers need not be conferred expressly, directly and unequivocally, but may be derived from a reasonable construction of the statutes. *Cf. Milwaukee v. Kilgore*, 193 Wis. 2d 168, 183-87, 190-91, 532 N.W.2d 690 (1995) (construing ambiguous statutes to confer on municipal courts power to suspend driver's license for failure to pay forfeiture imposed for violation of non-traffic municipal ordinance).

Although no single provision directly authorizes municipal courts to order parents to pay their children's forfeitures, this power may be found in the statutes by following a marked trail through a series of sections beginning with the one which makes parents liable for the forfeitures.

The Juvenile Justice Code, Wis. Stat. § 938.45(1r)(b), provides that "[i]n a proceeding in which the court has determined under s. . . . 938.343(2)" to impose a forfeiture on a juvenile, "the court may order a parent who has custody . . . of the juvenile to pay the forfeiture."

The Juvenile Justice Code defines a "court" as the juvenile court, or in the case of a juvenile who is subject to Wis. Stat. § 938.17(2), a municipal court. *See* Wis. Stat. § 938.02(2m). Wisconsin Stat. § 938.17(2) gives municipal courts concurrent jurisdiction with juvenile courts in cases involving non-traffic municipal ordinance violations, including jurisdiction to enter any of the dispositional orders permitted under Wis. Stat. § 938.343. *See* Wis. Stat. § 938.17(2)(d). Wisconsin Stat. § 938.343(2) permits a court to impose a forfeiture on a juvenile for violating a non-traffic municipal ordinance.

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Thus, a municipal court is a court which can determine to impose a forfeiture on a juvenile in a proceeding under Wis. Stat. § 938.343(2). And because the municipal court can impose a forfeiture on a juvenile under this section, it is a court which may order the parents of the juvenile offender to pay the forfeiture under Wis. Stat. § 938.45(1r)(b).

This conclusion is confirmed by Wis. Stat. § 895.035 which is titled "Parental liability for acts of minor child." Wisconsin Stat. § 895.035(2m)(b) provides that if either a juvenile or the juvenile's parent fails to pay a forfeiture ordered by either a juvenile court or a municipal court, the amount of the forfeiture may be docketed as a judgment against both the juvenile and the parent. This section obviously assumes that a municipal court can order a parent to pay a forfeiture assessed against the parent's child.

Moreover, any other conclusion would result in an unreasonable dichotomy, something to be scrupulously avoided in interpreting statutes. *See generally State v. Timm*, 163 Wis. 2d 894, 899, 472 N.W.2d 593 (Ct. App. 1991). There is no question that under Wis. Stat. § 938.45(1r)(b) a juvenile court can order the parents of a juvenile to pay a forfeiture imposed on their child for violating a non-traffic municipal ordinance. There is no logical reason why parents should be required to pay a forfeiture imposed on their child by a juvenile court, but not be required to pay a forfeiture imposed for the same act violating the same ordinance simply because the forfeiture was imposed by a municipal court having concurrent jurisdiction to impose the forfeiture on their child. *Cf. Trewhella v. Fiedler*, 185 Wis. 2d 499, 525, 517 N.W.2d 689 (Ct. App. 1994), *aff'd sub nom. Kilgore*, 193 Wis. 2d 168 (respondents do not explain how municipal courts could have been given authority to order forfeitures but not given power to enforce their orders in the manner the Legislature explicitly established).

Municipal courts have statutory authority to order the parents of a juvenile to pay a forfeiture imposed on their child for violating a non-traffic municipal ordinance.

Sincerely,

James E. Doyle
Attorney General

JED:TJB

CAPTION:

Municipal courts have statutory authority to order the parents of a juvenile to pay a forfeiture imposed on their child for violating a non-traffic municipal ordinance.