



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-35
February 12, 1985

Stewart K. Lambert
Deputy Prosecuting Attorney
Sharp County
P.O. Box 500
Cherokee Village, AR 72525

RE: Municipal and Juvenile Judges

Dear Mr. Lambert:

You have requested an opinion from this office regarding the following questions:

1. Whether one person can serve as municipal judge and juvenile court referee simultaneously; and,
2. Whether those salaries should be paid separately or in one lump sum.

The answer to question one is no. There are provisions in both the juvenile and criminal codes for transfer of cases between the municipal and juvenile courts depending on the age of the juvenile defendant and the nature of the offense. Ark. Stat. Ann. §45-420, §41-617 (Cum. Supp. 1983). It would be ethically questionable for one judge to unilaterally decide in which court he would try the juvenile, and any transfer between courts would raise the question of whether the same judge could be an impartial fact finder.

The Juvenile Court also has jurisdiction over matters of dependent/neglected children. Therefore, the juvenile referee might well deal with the parents on that issue in juvenile court and then be asked to hear a criminal misdemeanor charge stemming from the same situation in Municipal Court.

Therefore, one person should not serve as both municipal judge and juvenile judge.

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Further, in this situation even though the juvenile referee is a county position, and the municipal judge is technically a city position, both positions are funded by Sharp County. It is arguable that holding both offices would violate Article 19, §6 of the Arkansas Constitution which prohibits simultaneously holding more than one office in the same department of government.

Considering the discussion just previous, question two is moot. However, if that advice is ignored, then the salaries should definitely be paid separately. Ark. Stat. Ann. §45-415 (Repl. 1977) states that juvenile court personnel are paid from county monies appropriated for juvenile court expenses. On the other hand, the Ash Flat Municipal Court Judge is paid a salary determined by the Quorum Court in accordance with Ark. Stat. Ann. §22704.1 (Cum. Supp. 1983). Clearly the salaries would not be paid from the same county fund so they should not be combined.

The foregoing opinion, which I hereby approve was prepared by Assistant Attorney General Elizabeth Dowling.

Sincerely,


STEVE CLARK
Attorney General

jsc:ED:dc