



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

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STEVE CLARK
ATTORNEY GENERAL

March 5, 1985

OPINION NO. 85-70

The Honorable J.W. Green, Jr.
Prosecuting Attorney
602 South College
Stuttgart, Arkansas 72160

Dear Mr. Green:

This office has received your request for an opinion as to whether Stuttgart could set up a program whereby juveniles and youthful offenders could be placed in a work program rather than being fined. Research has disclosed nothing which would specifically prohibit Stuttgart from so doing; rather, the statutes encourage local participation of this nature, and authorize such a disposition as an alternative to a fine.

The Alternative Service Act (formerly Youthful Offender Alternative Service Act), codified at Ark. Stat. Ann. §43-2339 et. seq. (Repl. 1977 & Supp. 1983) encourages the development of local programs by specifically allowing the trial judge to sentence certain youthful offenders to alternative service programs. See Ark. Stat. Ann. §43-2342(b) (Supp. 1983). An "Alterntaive Service Program" is defined as

a) Any program providing corrective and preventive guidance designed to rehabilitate eligible offenders. . . which is certified by the Commission on Community Based Rehabilitation [The] program may operate in relation to private and public social institutions, organizations. . . and local communities located throughout the State including, but not limited to the following

- 1) Employment Resources. . .
- 2) Educational Resources. . .
- 3) Social Welfare Services. . .
- 4) The law enforcement system
- 5) Other relevant community organiza-
tions and groups - ethnic and cultural
groups, recreational and social or-
ganizations, religious and self help

groups, and others devoted to political
or social action. (emphasis added).

Thus, under this Act, Stuttgart could clearly set up some type of local work program as an alternative to a fine or term or imprisonment, for juveniles and youthful offenders. Two things should be remembered, however, in relation to this Act. One, any local program would have to be certified by the Commission on Community Based Rehabilitation. See Ark. Stat. Ann. §§43-2340(a) and 43-2341(a) (Supp. 1983). And two, only "eligible offenders" could be required to participate in such a program. "Eligible offender" is defined in Ark. Stat. Ann. §43-2340(f) (Supp. 1983) as any person who has been convicted of a felony offense other than a capital felony, first or second degree murder, first degree rape or kidnapping or aggravated robbery, and who has never been previously convicted of a felony. A person under age twenty-six can be an "eligible offender" even though he has been convicted of a previous felony if it was not a capital felony, first or second degree murder, first degree rape or kidnapping or aggravated robbery.

The Act which established Youth Services as a division of the Department of Human Services [Ark. Stat. Ann. §45-501 et seq (Repl. 1977)] also explicitly encourages the development of local programs. Ark. Stat. Ann. §45-504 (Repl. 1977) provides that the Youth Services Board "shall provide direction for the development of community based alternatives to the incarceration of youth up to the age of 18 years." Ark. Stat. Ann. §45-506 (Repl. 1977) provides that the Division of Youth Services is to serve as a liason between the State and local communities and is to provide technical assistance and guidance to local communities in the establishment and maintenance of programs and projects to combat juvenile delinquency. Clearly under this Act Stuttgart could work with Youth Services to develop a community based program for young persons.

And finally, if the offender is tried in juvenile court under the Juvenile Code of 1975, and is found to be delinquent, Ark. Stat. Ann. §45-436 (Supp. 1983) sets out

1. Juvenile delinquent is a person under 18, who has committed an act other than a traffic offense which, if such act had been committed by an adult, would subject such adult to prosecution for a felony or misdemeanor, or has committed an offense applicable only to a juvenile. Ark. Stat. Ann. §45-403 (Supp. 1983).

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the various permissible dispositions the juvenile judge may make. One such disposition is that the juvenile participate in a court approved public service not to exceed 50 hours. See §43-436(3)(b)(ix).

In summary, it is clear that Stuttgart may set up a community based program for juveniles and youthful offenders provided the program complies with the various statutory provisions set forth herein. Under the Juvenile Code, the Alternative Service Act and the Youth Services Act the trial judge (either juvenile or circuit) could require juvenile delinquents and youthful offenders to participate in this local work program or public service project as an alternative to a fine or other type of punishment.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Marci L. Talbot.

Respectfully submitted,


STEVE CLARK
Attorney General

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