



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

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STEVE CLARK
ATTORNEY GENERAL

March 11, 1985

OPINION NO. 85-76

Honorable Christopher Thomas
Executive Secretary
Judicial Department
Justice Building
Little Rock, Arkansas 72201

Dear Mr. Thomas:

By letter of February 6, 1985, you requested an opinion on the following issue:

Assume that the Circuit Judge of a judicial district, which has only one Circuit Judge, is temporarily unable to perform the duties of the office, due to severe illness, and the practicing attorneys of the county duly elect one of their number as a "Special Judge" in accordance with Article 7, Section 21 of the Arkansas Constitution of 1874, and Rule 17 of the Uniform Rules for Circuit, Chancery and Probate Courts. In an effort to assist such "Special Judge", may the Chief Justice, acting pursuant to Section 22-142 of the Arkansas Statutes Annotated, temporarily assign a Circuit Judge from another district to hold court in the county of the disabled judge? And, in light of Act 135 of 1961 (codified as Sections 22-342 through 346 of the Arkansas Statutes Annotated), may the "Special Judge" and the assigned Circuit Judge from the other district hold court in the county simultaneously?

In response to your first question, whether the Chief Justice, acting pursuant to Section 22-142 of the Arkansas Statutes Annotated, may temporarily assign a Circuit Judge from another district to hold court in the county of the disabled judge, the answer is no. In Burris v. Britt, 281 Ark. 225, 663 S.W.2d 715 (1984), the Arkansas Supreme Court noted that:

. . . the constitution specifically provides two modes for replacing the regular circuit judge

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when that judge recuses from the trial of a case. See Ark. Const. Art. 7, §§21 and 22. Since the modes are expressly set out they are exclusive of all other methods of temporarily replacing a circuit judge and a statute providing a different method is unconstitutional. (citation omitted).

Burris at 227. In the Burris case, the regular circuit judge had recused himself and the Chief Justice had assigned a retired circuit judge to hear the case as a circuit judge on recall.

It would apparently make no difference that the judge outlined in your facts is unable to perform his duties due to illness as opposed to having recused himself as in the Burris case. The Arkansas Supreme Court found that the only two methods for replacing the regular circuit judge were those methods outlined in Ark. Const. Art. 7, §§21 and 22 and that a statute providing a different method is unconstitutional.

Since the local attorneys have elected a "Special Judge" pursuant to the authority of Art. 7, §21, of the Arkansas Constitution, that "Special Judge" has the authority to enter into an exchange agreement pursuant to Art. 7, §22 and Ark. Stat. Ann. §22-342 through §22-346 (Repl. 1977 and Supp. 1983), the statutory provisions which implement Art. 7, §22. Thus, it would appear that the temporary assignment of a judge under the circumstances you outline would encroach upon the exclusive methods of temporarily replacing a circuit judge as noted by the Arkansas Supreme Court in Burris v. Britt, supra.

In light of the fact that I have answered your first question in the negative, it is not necessary to reach the second question you raised regarding whether the "Special Judge" and the assigned Circuit Judge from another district may hold court in the county simultaneously.

This opinion which I hereby approve, was prepared by Assistant Attorney General Jack Gillean.

Sincerely,


STEVE CLARK
Attorney General

SC:JG:jh