



STEVE CLARK
ATTORNEY GENERAL

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

(501) 371-2007

OPINION NO. 85-105

April 16, 1985

The Honorable Bill Walters
State Senator
P. O. Box 280
Greenwood, Arkansas 72936

Dear Senator Walters:

In response to your request for information regarding legal representation of the Logan County Judge, we have found the following:

A quorum court is authorized to hire an attorney to represent its interests. Ark. Stat. Ann. §17-4014(2)(c) (Repl. 1980). However, the interests of the quorum court and the county judge may conflict occasionally and thus, the legal prosecuting attorney may represent the county judge in any given case. McCuen v. Harris, 271 Ark. 863, 611 S.W.2d 503 (1981).

And, by letter dated March 13, 1985 to the Logan County Quorum Court, Paul X. Williams, Jr., Deputy Prosecutor for the Fifteenth Judicial District, offered his legal services to the Court or to the County Judge on a case-by-case basis.

If the interests of the Quorum Court and the County Judge conflict on a particular issue, the County Judge can request that the Court hire alternative counsel by ordinance as authorized in Ark. Stat. Ann. §17-4014(2)(b).

For example, in Rothrock v. Walker, 197 Ark. 846, 125 S.W.2d 459 (1939), the Arkansas Supreme Court noted that a prosecutor normally would represent the county judge (and court) in an action pending against them in that judicial circuit. The Court cited with approval the following language of Oglesby v. Ft. Smith District, 119 Ark. 567, 179 S.W. 178 (1915):

We think the county court has power to employ additional counsel. . . in cases where the prosecuting attorney neglects or refuses to perform the duties imposed on him by statute, or, where his other duties are of such character that he does not have time to properly represent the county.

Id. at 851.

Or the County Judge could request that the Prosecutor represent his interests in a case.

However, in McCuen v. Harris, *supra*, the prosecutor of Garland County had petitioned the lower court to be relieved as counsel due to the conflicting interests of county officials in a legal dispute, but was denied withdrawal. In overturning this part of the lower court ruling, the Arkansas Supreme Court held:

We are of the view and hold that a prosecuting attorney is placed in an untenable position whenever, as here, he is required to represent county officials who have competing interests with respect to other county officials. It could place him in the position. . .to have to choose between them or accept the one who first requests his services.

Id. at 865.

Should the Quorum Court refuse to provide any representation for the County Judge when a conflict between their respective legal positions exist, the County Judge may employ his own counsel and take any further legal steps he wishes against the Court by mandamus and/or claim for private attorney's fees.

We find no Arkansas case law on this latter course of action and thus, cannot predict the outcome of such a lawsuit as instituted by the County Judge.

Sincerely,



STEVE CLARK
Attorney General

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cc: Buster Tritt