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JUSTICE BUILDING, LITTLE ROCK 72201

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OPINION NO. 85-158

June 25, 1985

Honorable William P. Mills
Representative
Box 672
Kensett, Arkansas 72082

Dear Rep. Mills:

You have requested an opinion on the following items:

- 1) Whether an indigent defendant in a police court or mayor's court is entitled to appointed counsel and if so, in what instances;
- 2) how will appointed counsel be paid; and
- 3) whether the Arkansas statutes provide any authority for city councils with mayor's courts to have a fund to pay attorneys for indigent defendant representation.

The answer to your first question is clear; an indigent defendant is entitled to counsel in any criminal proceeding where he is actually sentenced to jail. The United States Supreme Court addressed this issue in Scott v. Illinois, 440 U.S. 367 (1979), and held that the Sixth and Fourteenth Amendments to the Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense. The Scott v. Illinois case narrowed somewhat an earlier Supreme Court decision which indicated that an indigent defendant was entitled to appointed counsel anytime there was a possibility of a jail sentence. Argersinger v. Hamlin, 407 U.S. 25 (1972).

Arkansas law on the issue parallels the requirements of the Constitution as it was interpreted by the Supreme Court in Scott v. Illinois. Rule 8.2(b) of the Arkansas Rules of Criminal Procedure, Ark. Stat. Ann. Vol. 4A (Repl. 1979), states:

- (b) Whenever an indigent accused is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel to represent him, the court shall appoint counsel to represent him unless he is charged with a misdemeanor and the court has determined that under no circumstances

will imprisonment be imposed as a part of the punishment if he is found guilty.

Paragraph (c) of the same rule also contemplates appointment of counsel for indigent defendants in city and police courts. At the same time that paragraph leads to a discussion of your second question of how appointed counsel will be paid. Paragraph (c) states:

(c) Attorneys appointed by municipal courts, city courts, police courts, and justices of the peace may receive fees for services rendered upon certification by the presiding judicial officer if provision therefor has been made by the county or municipality in which the offense is committed or the services are rendered.

The answer is appointed counsel may or may not be paid. If the county or municipality has provided for such fees then counsel may be paid. Ark. Stat. Ann. §43-2419 (Repl. 1977) allows fees for appointed counsel to be paid out of the County General Fund. See also Ark. Stat. Ann. §17-456 et seq. (Supp. 1983), which grants a county the authority to create a fund to pay appointed counsel, by taxing an additional fee to each case filed in circuit, chancery, probate or municipal courts in that county.

However, in answer to your last question, there is no parallel statutory provision for the establishment of such a fund by the municipalities where police or city courts exist.

This opinion which I hereby approve, was prepared by Assistant Attorney General Joel O. Huggins.

Sincerely,



STEVE CLARK
Attorney General

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