



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201
July 25, 1985

(501) 371-2007

OPINION NO. 85-168

Honorable George E. Wimberly
Arkansas House of Representatives
No. 15 Brickton Place
Little Rock, AR 72205

Dear Representative Wimberly:

This is in response to your request for an Attorney General's opinion regarding the status of several classes of Court and County employees in Pulaski County. Since you have asked seven different questions I will respond to each separately as follows:

1. Does Pulaski County have any responsibility to the employees of the Sixth Judicial Circuit and Chancery Courts for the following:

- (a) Withholding of Federal, State and Social Security taxes.
- (b) Payment of Social Security-employer matching and unemployment taxes.
- (c) Health insurance and retirement benefit payments.
- (d) Protections and benefits of the Pulaski County Personnel Policy regarding annual leave, sick leave, grievance procedures, etc.

Under Arkansas statutory law, including Acts 336, 501 and 502 of 1985 referred to in your letter, the employees of the Pulaski County Circuit and Chancery Courts are paid by the County. This fact was reiterated and discussed in the Supreme Court's opinion in Venhaus v. Lofton. Since the County pays the salaries by county warrant or check, the County is responsible to withhold Federal, State and Social Security taxes, and to pay Social Security employer matching taxes and unemployment taxes.

It is further my understanding that these employees are covered under the County health insurance plan and that they are covered by the County policy regarding sick leave,

Honorable George E. Wimberly
Page 2
July 25, 1985

annual leave, etc. This would seem to be the appropriate situation since the County pays their salaries.

Currently the Court employees are covered under the State Retirement System, as are all other employees of the County. The County pays the same percentage of retirement benefits for these employees that it pays for other County employees. This is probably the only feasible way to handle the situation under the current system where the County is responsible for the salaries and benefits of these employees. Any change in this system must be accomplished through the legislative process.

2. If the Pulaski Chancery Clerk and Master in Chancery and their employees perform no duties for any county other than Pulaski County, are they county employees or court employees?

It is my opinion that the Master in Chancery is an officer of the Court and her employees are employees of the Court. Pursuant to Ark. Stat. Ann. §22-417.11 (Supp. 1983), the Chancellors of the Sixth Circuit-Chancery Court appoint the Chancery Clerk for Pulaski County. The clerk may in turn appoint deputies. In my opinion these persons are employees of the Court.

Even though these various employees are officers and employees of the Court regarding their job functions, regarding their pay the General Assembly sets the salaries of all these persons, and the county is given the responsibility of paying them. In this respect, some persons might consider them to be county employees.

3. Do the Sixth Judicial Circuit and Chancery Judges have the discretion to set lower salaries for their employees than those set forth in Acts 336, 501, and 502 of 1985?

No. The salaries established for the employees covered by Act 336 are specific, set amounts which do not provide any leeway either higher or lower. The salaries established for the employees covered by Acts 501 and 502 are specific, set amounts "unless a higher salary is provided by county ordinance." There is no authorization for anyone to pay these persons an amount lower than the specific salaries used as a base in these Acts.

4. Are deputy prosecuting attorneys and other employees of the prosecuting attorney's office county employees? If they are not county employees, does the county have any responsibility to them regarding items (a), (b), (c) and (d) of Question No. 1 above?

Honorable George E. Wimberly
Page 3
July 25, 1985

It is my opinion that deputy prosecuting attorneys are State officers. A prosecuting attorney is a State officer. Ark. Const. Art. 7, §24; Griffin v. Rhoton, 85 Ark. 89, 107 S.W. 380 (1907); Smith v. Page, 192 Ark. 342, 91 S.W.2d 281 (1936); Martindale v. Honey, 259 Ark. 416, 533 S.W.2d 198 (1976). Amendment 21, Sec. 2 of the State Constitution states: "The General Assembly of Arkansas shall by law determine the amount and method of payment of salaries of prosecuting attorneys." The salary of the Sixth Judicial Circuit prosecutor has been set by statute. See Ark. Stat. Ann. §§24-111, 24-112 (Supp. 1983). It is further provided that his and other prosecutors' salaries "shall be paid by the State of Arkansas in twelve (12) equal monthly installments, by warrants drawn by the Auditor of the State of Arkansas, and paid from the general revenue fund of the State of Arkansas." Ark. Stat. Ann. §24-112.4 (Supp. 1983). Each prosecutor is also provided a contingent expense fund (Ark. Stat. Ann. §24-113), said fund to be paid by the county upon vouchers signed by the prosecutor and allowed by the county court as claims against the general revenues of the county. The amount set for the Sixth Circuit has a high and low range, with the quorum court setting the exact amount therein. Ark. Stat. Ann. §24-114 (Supp. 1983).

Various legislative acts over the years have authorized prosecuting attorneys to appoint deputy prosecutors and other employees. Act 22 of 1941 initially authorized the Sixth Judicial Circuit prosecutor to appoint seven or more deputies, six or more stenographers, and additional officers, and it established specific pools of money for each type of employee from which the prosecutor could pay his appointees. These salaries were to be paid by the county in twenty-four (24) semi-monthly installments by the county court upon vouchers signed by the prosecutor and allowed as claims against the county general funds. Section 5 of the Act stated that the quorum court "shall annually appropriate out of the general revenue funds sufficient to cover the salaries provided for herein."

Subsequent sessions of the General Assembly have produced similar Acts authorizing the appointment of deputy prosecuting attorneys and support staff such as investigators, warrant clerks, stenographers, and paralegals. For example, see Act 870 of 1975, Act 239 of 1977, and Act 4 of 1983. Each of these Acts begins with the following prefacing statement:

The Prosecuting Attorney for the Sixth Judicial District of the State of Arkansas shall be entitled to the following assistants and employees to be paid by the county in which they serve: (emphasis added).

Honorable George E. Wimberly
Page 4
July 25, 1985

In Martindale v. Honey, 259 Ark. 416, 533 S.W.2d 198 (1976), the Arkansas Supreme Court recognized that deputy prosecuting attorneys regularly exercise some of the State's sovereign power, that when they act on behalf of the prosecutor they are clothed with the same power which he possesses and they they are in effect State officers. Consequently, the Court held that a State legislator could not be appointed as a deputy prosecutor, because this violated a State Constitutional prohibition against any State legislator being appointed to a State office. Considering that deputies are appointed by the prosecutor, that their salaries are set by law, and that they do exercise sovereign authority, this seems to be a correct conclusion that they are State officers.

It is not clear whether the other employees in the prosecutor's office (investigators, paralegals, etc.) are "State" employees. One could certainly reach that conclusion by applying the majority's holding in the Venhaus case and comparing their stature to that of employees of a circuit court.

However, whether they are technically considered State employees or not, the law is explicit that all these employees' salaries are to be paid by the County from the County's funds. Consequently, since the County is paying the salaries of those persons, it is my opinion that the County would have the responsibility for withholding of Federal, State and Social Security taxes and payment of Social Security matching tax and unemployment tax. These persons should also continue to be covered by the County health plan and the policy regarding annual leave and sick leave.

As is the case with employees of the Circuit and Chancery Courts, deputy prosecutors are covered by the State Retirement System and the County pays into the System for them in the same manner it does for County employees. Since the Supreme Court has ruled that deputy prosecutors are State employees, this is something that the counties may wish to attempt to change through the legislative process.

5. Can the General Assembly lawfully direct one county to pay all of the salaries of the court employees of a judicial district comprised of more than one county?

Assuming that there are valid reasons for the Legislature to direct one county in a multi-county judicial district to pay the entire salary of court employees of that district, such an act would probably be lawful. In Act 336 of 1985, the General Assembly directed that salaries of the various

Honorable George E. Wimberly
Page 5
July 25, 1985

Sixth Judicial District employees covered by the Act be paid by Pulaski County. If the facts are such that those employees' offices are all located in the Pulaski County Courthouse; that the overwhelming amount of work they do pertains to Pulaski County cases; that their work largely benefits the citizens of Pulaski County; etc., then it may be legitimate to require Pulaski County pay these expenses.

If these employees do perform some work in Perry County or involving Perry County cases, it would seem more equitable that Perry County pay some pro rata share of their salaries. For example, if a probation officer has several probationers that he supervises in Perry County, then perhaps the citizens of Perry County should reimburse Pulaski County through their Quorum Court.

Under Act 4 of 1983, the prosecuting attorney for the Sixth Judicial District is authorized to designate various deputies to represent the prosecutor's office in Perry County. If this is done, Perry County must reimburse Pulaski County for the time spent by the deputy in Perry County. Perhaps the same system should exist for Perry County to pay a portion of the salaries for Sixth Judicial Court employees. This would have to be pursued through the legislative process.

6. Are the Sixth Judicial District Public Defender and his deputies and employees county employees? If they are not county employees, does the county have any responsibility to them regarding items (a), (b), (c), and (d) of Question No. 1 above?

Act 996 of 1975 provides for the establishment of public defender commissions in the various judicial districts of the State, and for the creation of public defender offices in those districts. Ark. Stat. Ann. §43-3306(e) sets out the salary provision for those offices as follows:

(e) The maximum salaries and expenses of the Public Defender's Office in each judicial district shall be established by the Commission. The salaries and expenses of the Office of Public Defender in each district shall be paid by the counties in the district in such amounts as may be approved by the respective quorum courts of such counties. (emphasis added).

Act 996 governs public defenders in every judicial district except for the Sixth Judicial District. The Sixth District public defender's office is governed by Act 279 of 1975. Thorne v. State, 269 Ark. 556, 601 S.W.2d 886 (1980). Section 3 of that Act initially provided that the Circuit Court criminal judges could establish a defender system and

Honorable George E. Wimberly

Page 6

July 25, 1985

provide compensation for the attorneys "as is necessary." These salaries were to be paid from County general revenues and "without the necessity of a prior appropriation therefor by the quorum court." The Arkansas Supreme Court subsequently held that it was unlawful to allow the judges to order payment by the county without authorization of the Quorum Court. Mears v. Adkisson, 262 Ark. 636, 560 S.W.2d 222 (1978). Under current law the County is to pay the salaries of the public defender's office through Quorum Court appropriation.

It is my opinion that the public defender and his deputies are officers of the Court so far as their job functions are concerned. However, as is the case with Court employees, deputy prosecutors and others discussed earlier in this opinion, their salaries are to be paid by the County under the law. Consequently, any response to your question about the County's responsibility for the items listed in question number 1 would be the same as I have given in regard to Court employees, deputy prosecutors, and others. The appropriate remedy to seek any change in these responsibilities is through the legislative process.

7. Are the Probation Officer positions established by Pulaski County, under the Arkansas Adult Probation Commission Program (Act 151 of 1983), court, state, or county employees? If they are not county employees, does the county have any responsibility to them regarding items (c) and (d) of Question No. 1 above?

Regarding their job functions, since probation officers are selected by the Circuit Judges and perform probation and parole duties which are part of the administration of justice, they would probably be considered officers of the Court. However, the County is responsible for their salaries and job benefits.

Pursuant to Act 151 of 1983, the Adult Probation Commission distributes grants of State aid to the various counties for use in administering the adult probation program. Ark. Stat. Ann. §42-1309 (Supp. 1983). These grants are applied for by the county, are paid to the county in a lump sum, and the county judge signs off on the grant proposal. Judge Venhaus has requested and received such grants for Pulaski County.

According to the Adult Probation Commission Director, before a county receives such aid it must, through its county judge, sign a budget sheet which includes a commitment by the county to provide a "personal service match." This

Honorable George E. Wimberly

Page 7

July 25, 1985

means that the county provides any additional funds above the State aid amount which are needed for salaries, and also agrees to pay Social Security matching funds and unemployment taxes. The probation officers are also covered by the particular county's health insurance program and retirement plan provisions. Similarly, the officers are covered by the county policies regarding annual leave, sick leave, etc. In sum, the county has the responsibility to appropriate the salaries of these employees and to provide the other benefits to which county employees are entitled.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jeffrey A. Bell.

Sincerely,



STEVE CLARK
Attorney General

SC/JB/pw