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OPINION NO. 86-197

May 13, 1986

Honorable Sam Pope
Prosecuting Attorney
315 North Cherry St.
P.O. Box 148
Hamburg, AR 71646

Dear Prosecutor Pope:

This letter is written in response to your request for an Opinion concerning the propriety of charging a filing fee for affidavits and warrants of arrest in municipal court. Your letter stated that the Municipal Court of Lake Village and Eudora, Arkansas, has a practice of requiring a filing fee of \$32.00 before filing affidavits for warrants of arrest arising out of this court. You stated this applies to both felony and misdemeanor cases. You further state that numerous citizens have been unable to follow through on serious criminal violations because they have been unable to pay the filing fee. Your specific question is whether State law allows this filing fee.

Ark. Stat. Ann. §43-401 et. seq. (Repl. 1977), states:

Persons charged with the commission of a public offense, shall be liable to be immediately arrested, and proceeded against in the manner hereinafter directed.

Furthermore, Ark. Stat. Ann. §43-408, states:

It shall be the duty of a magistrate to issue a warrant for the arrest of a person charged with the commission of a

public offense, when, from his personal knowledge, or from information given him on oath, he shall be satisfied that there are reasonable grounds for believing the charge.

Nothing in the statutes just cited or in the Arkansas Criminal Code in any way refers to a filing fee that must be accompanied by the affidavit for the warrant of arrest. Such a fee does not appear to be authorized by State law, and in fact appears to be inconsistent with the teachings of Article 2, §13 of the Arkansas Constitution, which states:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase, completely, and without denial, promptly, and without delay, conformably to the laws.

A victim of a crime should not be forced to pay a price to bring the perpetrator to justice. It appears such a fee is not allowed by law and should not be charged.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Randel K. Miller

Sincerely,


STEVE CLARK
Attorney General

SC/RKM/ljm