

1981 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-11, 1981 WL 96538

Office of the Attorney General

State of South Carolina

Opinion No. 81-11

February 9, 1981

*1 Mr. L. Edmund Atwater, III
Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Atwater:

Your letter of January 7 inquires as follows:

'The first question we wish to pose is whether or not the cost of the preparation of the transcript is an investigative, expert or other service reasonably necessary for the representation of the defendant in connection with the issues relating to guilt or innocence as provided in paragraph C of 16-3-26. If so payable under this paragraph, does it become part of the \$2,000 expense limitation imposed therein?'

In my opinion, the costs of transcripts are not payable under Section 16-3-26(C). This section contemplates investigative undertakings necessary for the proper representation of a defendant, and the furnishment of the transcript of the trial proceedings is not a part thereof. Authorization under this paragraph for the payment of 'other services' must be viewed in the light of the rule of ejusdem generis, i.e., those services of the same character and nature as investigative or expert services, the procurement of which is determined necessary. In any event, the limitation upon amounts payable under this statute is specifically fixed at not more than \$2,000.00. This is applicable as to any appeal that may be taken also. See Rule 7(2), Rules of the Supreme Court, pursuant to Defense of Indigents Act.

'In the alternative, if your opinion concludes that such payment would not be made under the authority of paragraph C, would such payment be appropriate from paragraph B of the Code section which provides for attorney's fee and costs, not exceeding \$1,500?'

Section B relates to those cases in which the death penalty is sought.

In my opinion, the costs of transcripts of trial are not payable under subsection B. This subsection, just as subsection C, is aimed at fees and costs which may be reimbursed for defense of indigents which are incurred before or during a trial stage. I think that your interoffice communication (undated), a copy of which you enclosed in your letter, reflects the administrative construction given by you regarding the furnishing of costs of transcripts. In this instance, the costs of preliminary hearings of transcripts are payable from the \$2,000.00 set aside for expenses in such cases, pursuant to the provisions of subsection C. The costs of the trial transcripts stands, however, in my opinion, on a different footing and cannot be recovered from subsection B.

'In the event you conclude that payment should not be made under paragraph C or B of [Code Section 16-3-26](#), may payment be made for the cost of the preparation of the transcript under the provisions of the general Defense of Indigents Act, [Code Section 17-3-80](#), providing for necessary expenses actually incurred in the representation of persons pursuant to the act?'

I think that the answer to this question is found in Rule 7(3) of the Rules of the Supreme Court adopted pursuant to the Defense of Indigents Act, effective 5/1/79. This Rule authorizes payment of the reporter's fee, with certain requirements being imposed

upon the court reporter coincident with the submission of the bill. Reimbursement is to be made out of the Defense Fund, which is the fund created by [Section 17-3-80](#), the limitation thereof being an amount not exceeding \$50,000.00.

*2 I advise, therefore, that, in my opinion, the costs of transcripts in death penalty cases and in nondeath penalty cases must be paid out of the Defense Fund, pursuant to the provisions of [Section 17-3-80](#).

Very truly yours,

Daniel R. McLeod
Attorney General

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