

1981 WL 157914 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1981

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

Dear Ed:

Your letter dated July 31, 1981 requesting an opinion of this office concerning the legal services agreement between the Public Defender Corporation of Sumter County and certain attorneys in that county has been forwarded to me for reply. It is apparent from this agreement that the attorneys with whom the Corporation has contracted are not employees of the Public Defender Corporation but are, rather, private practicing attorneys contracting for retainers to represent indigent defendants in Sumter County. In fact, the agreement makes clear that the retained attorneys are independent contractors of the Corporation who, in turn, must employ their own agents or employees with the contracted retainer to carry out their duties under the contract.

The provisions of Supreme Court Rule 6, promulgated pursuant to the Defense of Indigents Act, clearly requires that State funds not be expended for appointment of an attorney other than the Public Defender where a Defender Corporation has been established in a county. Those provisions, of course, would include the Public Defender as well as his designated assistants or agents. Since the contract in question clearly seeks to alleviate the agency relationship between the Public Defender Corporation and the retained counsel, the status of these attorneys can only be construed as that of retained counsel rather than Assistant Public Defenders. Hence, it is the opinion of this office that funds appropriated to the Public Defender Corporation pursuant to the Defense of Indigents Act cannot be dispersed pursuant to this contract.

If you have any questions, or if I can be of service to you in any matter, please do not hesitate to contact me.

With kind regards,

Brian P. Gibbes
Senior Assistant Attorney General
Criminal Division

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