

1973 WL 26825 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 30, 1973

*1 Mr. G. Werber Bryan
County Attorney
Messrs. Bryan, Fahnmuller, King & Goldman
Attorneys at Law
Post Office Box 2038
Sumter, South Carolina 29150

Dear Werber:

Thank you for your letter of July 20 concern in whether or not the counties are obligated to pay defense attorneys who represent indigents when State appropriations for such purposes have been exhausted.

In my opinion, this is a matter which the counties should undertake but which they are not statutorily obligated to undertake. The provisions of Section 9, Part 1, of the General Appropriations Act, that expenses incurred in a county for the defense of indigents in excess of the county's share of funds are intended to be borne by the county, results from a previous unsatisfactory situation which arose. Some counties utilized all of their appropriated funds and then went back to the Legislature for deficit financing. The General Assembly took the view that if anybody was to make up the deficit for attorneys' fees, it should rest upon the county involved and should not come from funds allocated to other counties. That accounts for the statement of intent expressed in the Appropriations Act. In counties where there is a public defender corporation, no problem is presented. In other counties, a surplus may exist at the end of the year, while in still other counties a deficit is found at the beginning of the current year by reason of the exhaustion of that county's appropriation. The General Assembly does not authorize the switching of funds from a surplus county to a deficit county. Where deficits occur, they must be made up by the appropriation of county funds or from current appropriations, as indicated in Mr. Gray's letter. It is my view that the counties should undertake this, as stated, but it is my view also that they are not required to. I recognize that there is a possibility of a constitutional issue here, but I am aware of no precedence.

In my opinion, the matter can only be determined by an action brought by a lawyer who has rendered services to the indigents for which he has not been paid.

This whole difficulty could be avoided by the formation of a defender corporation in every county.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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