

CRIMINAL LAW: Public defenders, except when operating
PUBLIC DEFENDER: under certain federal grants, have no
COOPERATIVE AGREEMENTS: authority to provide services to indigent juveniles or indigents charged with misdemeanors and cannot contract with the City of St. Louis for additional assistants to perform such services.

OPINION NO. 363

December 4, 1973

Honorable Kenneth J. Rothman
State Representative, District 77
309 State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Rothman:

This opinion is in response to your opinion request asking:

- "a) Is a circuit public defender precluded from providing public defender services to indigent juveniles and indigents charged with misdemeanors?
- "b) If a circuit public defender is not precluded from providing services to indigent juveniles and indigents charged with misdemeanors could he exceed his authorized staff of 15 lawyers in order to provide services to these individuals if the state were reimbursed?
- "c) Can the City of St. Louis contract with the state to provide the aforementioned services?"

In answer to your first question, there is no statutory authority under House Bill No. 1314, 76th General Assembly, relating to such defenders which would authorize them to use state funds to provide such services. Your attention is called to Senate Bill No. 52, and its amendments, of the 77th General Assembly, which did not pass. Such bill would have extended the authority of the public defenders to represent indigent persons in misdemeanor, sexual psychopath, mental health, incompetency and juvenile proceedings.

We held in our Opinion No. 108, dated February 23, 1973, to Senator Lee, that such defenders could employ additional assistants

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to be paid from federal grant funds for the purpose of defending indigents in juvenile and misdemeanor cases and we remain of that view despite the fact that Senate Bill No. 52 did not pass. However, as noted therein, our views respecting such use of federal funds were limited to the precise question presented and we do not believe the reasoning employed in that opinion can be extended in these premises.

In answer to your second question asking whether the defender may exceed his authorized staff in order to provide such services if the "state were reimbursed", it is our view that he may not do so. In analyzing this question, however, it must be considered in conjunction with your third question.

Your third question asks whether the City of St. Louis can contract with the state to provide the aforementioned services. Any question of reimbursement or contract is dependent upon whether or not the public defender has authority under the provisions of Sections 70.210, RSMo et seq., to enter into such contracts. These cooperative agreement sections require first of all that the city or political subdivision, as therein defined, have the power to do that which they desire to contract to do and presupposes that the "state" officer also has such power. Without passing on the question of the city's power in these premises it is clear that the public defender has no such statutory power and therefore we conclude that such a contract is not authorized by law.

As we noted in our opinion to Senator Lee, which we have enclosed, the changes in the court rulings with respect to juvenile and misdemeanor cases make it imperative that the public defenders be given the power to respond to the demands of justice. The resolution of the problems which exist, noted by your questions, is however, in our view, a matter for determination by the Missouri General Assembly.

We have provided you with summary answers to your questions in view of your request for an expedited response.

CONCLUSION

It is the opinion of this office that public defenders, except when operating under certain federal grants, have no authority to provide services to indigent juveniles or indigents charged with misdemeanors and cannot contract with the City of St. Louis for additional assistants to perform such services.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 108
2/23/73, Lee