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STATE CAPITOL
PHOENIX, ARIZONA

June 6, 1966

DEPARTMENT OF LAW OPINION NO. 66-15 (R-78)

REQUESTED BY: THE HONORABLE JERRY L. SMITH
Coconino County Attorney

QUESTIONS:

1. Can the Superior Court Judge of Coconino County appoint a local attorney from the Coconino County Bar to handle all of the indigent criminal defense cases for the County?
2. Does this violate Article 2, Sections 11-581 to 11-586 of the Arizona Revised Statutes?

ANSWERS:

1. See body of Opinion.
2. No.

Your letter states that approximately \$6,000 per year has been spent by Coconino County for the defense of indigents accused of a crime who cannot afford an attorney. Your letter further states that the Superior Court judge would like to appoint from the local Bar one attorney to handle, with exceptions, the majority of the indigent defense cases and insanity hearings. The pay would be from \$400 to \$500 a month and would not exceed the approximate average of \$6,000 per year now being spent.

There is no question that the Superior Court judge has the authority and power to appoint a member of the Bar to represent an indigent defendant accused of a felony or serious misdemeanor, 17 A.R.S., Rules of Criminal Procedure,

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Rule 163; State v. Anderson, 96 Ariz. 123. The attorney so appointed is entitled to reimbursement in an amount determined by the Court that appointed him, to be paid by the County in which the Court presides. The Arizona Revised Statutes, §13-1673, as amended, provides as follows:

"When counsel is appointed by the court and represents the defendant in either a criminal proceeding or insanity hearing, he shall be paid by the county in which the court presides, provided that in those matters where a public defender is appointed, no compensation shall be paid by the county. Compensation for such services rendered to defendant shall be such amount as the court in its discretion deems reasonable, considering the services performed. As amended Laws 1964, Ch. 43, §3."

Therefore, it is the opinion of this office that the Superior Court judge does have the power to appoint a member of the Bar to represent an indigent accused in a criminal or insanity hearing, and that the Court may in its discretion determine the amount of compensation to be paid to the attorney by the County in which the Court presides. In those matters where a public defender has been appointed, no compensation shall be paid by the County.

The plan as described by your letter, in which one attorney from the local Bar will handle a majority of cases, does not violate the provisions of A.R.S. §§11-581 to 11-586. These sections provide for the appointment of a public defender in counties of over 100,000 persons, and the controlling statute is A.R.S. §11-581, as follows:

"In any county with a population of one hundred thousand persons or more the board

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of supervisors may establish the office of public defender and appoint a suitable person to hold that office."

It is not obligatory upon the Board of Supervisors to establish the office of a public defender in counties of 100,000 persons or more; rather it is a discretionary act. Therefore, it is the opinion of this office that the Board of Supervisors of Coconino County is not required to establish the office of a public defender, and the assignment of the majority of criminal cases to one member of the local Bar, compensation to be paid to that member by the County of Coconino, is not in violation of §§11-581 to 11-586 of the Arizona Revised Statutes.

It is noted that in any event that the provisions of A.R.S. §11-581 to §11-586 would not apply at this time to Coconino County for presently the population of that county is less than 100,000 persons.

Respectfully submitted,

Darrell F. Smith

DARRELL F. SMITH

The Attorney General

DFS:md