



JIM RYAN

ATTORNEY GENERAL
STATE OF ILLINOIS



July 14, 1995

FILE NO. 95-008

JUDICIAL SYSTEM:
Appointment and Duties
of the Public Defender

Honorable Patrick W. Kelley
State's Attorney, Sangamon County
Room 402, County Complex
200 South 9th Street
Springfield, Illinois 62701

Dear Mr. Kelley:

I have your letter wherein you pose several questions concerning the selection and duties of public defenders. Specifically, you have inquired: 1) whether Sangamon County is required to appoint a chief public defender; 2) if so, whether the chief public defender may serve on a part-time basis; and 3) what duties and responsibilities the chief public defender must perform. For the reasons set forth below, it is my opinion that: 1) a public defender must be appointed for Sangamon County; 2) the public defender may be appointed to serve on a part-time basis; and 3) the public defender may exercise those duties and powers which are expressly granted by statute and those which are necessarily implied therefrom, including representing indigent

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defendants in criminal cases, appointing his or her assistants and managing the affairs of his or her office.

I note, initially, that it is my understanding that your questions arise, at least in part, from proposals which have been made for the appointment of several public defenders to serve simultaneously in Sangamon County, in lieu of a single public defender and his or her assistants. Thus, the term "chief" public defender, in your questions, is a reference to a centralized office presided over by a single public defender, as contrasted to a system consisting of several coequal but separate public defenders.

Based upon 1990 Federal census figures, the population of Sangamon County is 178,386 inhabitants. (See Illinois Blue Book 1993-94 (George H. Ryan ed., 1993).) Sections 3-4001 and 3-4004 of the Counties Code (55 ILCS 5/3-4001 and 5/3-4004 (West 1992)) respectively provide:

"Public Defender in counties over 35,000. In each county of this State containing 35,000 or more inhabitants there is created the office of Public Defender and the person to be appointed to such office shall be known as the Public Defender. No person shall be eligible to or hold such office unless he is duly licensed as an attorney and counsellor-at-law in this State."

"Appointment of Public Defender in counties under 1,000,000. As soon as may be after this Division becomes applicable to a county with a population under 1,000,000, the judges of the Circuit Court of the circuit in which the county is located shall, by a ma-

majority vote of the entire number of those judges, appoint to the office of Public Defender a properly qualified person, who shall hold office, his death or resignation not intervening, at the pleasure of the judges competent to appoint. Whenever a vacancy occurs in the office it shall be filled in the same manner, and the person appointed to fill the vacancy shall have the same tenure of office." (Emphasis added.)

The primary rule of statutory construction is to ascertain and give effect to the General Assembly's intent. (Illinois Graphics Co. v. Nickum (1994), 159 Ill. 2d 469, 479.) Legislative intent is best evidenced by the language used in the statute. (People v. Jameson (1994), 162 Ill. 2d 282, 288.) Where the language of a statute is clear and unambiguous, it should be given effect as written. Abrahamson v. Illinois Dept. of Professional Regulation (1992), 153 Ill. 2d 76, 91.

Under the express language of section 3-4004, it is clear that in a county which contains more than 35,000 inhabitants, but less than 1,000,000 inhabitants, the judges of the judicial circuit in which the county is located "shall * * * appoint * * * a properly qualified person" to the office of public defender. Moreover, the provisions of section 3-4004 also indicate that whenever a vacancy occurs in the office of public defender, the vacancy "shall be filled in the same manner."

These statutory provisions clearly contemplate the appointment of one person to hold the office of public defender in each such county (or two or more adjoining counties which

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maintain a common office). It is noteworthy, in this regard, that all references to the office of public defender in the pertinent provisions are in the singular; none is in the plural. It is axiomatic that when the Constitution or laws of the State create an office and prescribe the duties of its incumbent, no other person may be employed to perform the duties imposed upon such officer. (See Ashton v. Cook County (1943), 384 Ill. 287, 300.) Therefore, creation of a system of independent public defenders in a county is inconsistent with the statutory scheme, which contemplates a single public defender, and exceeds the power of the appointing authorities. Consequently, it is my opinion that the judges of the seventh judicial circuit are under duty to appoint a properly qualified person to the office of public defender of Sangamon County, who will be responsible for executing the powers and duties of that office.

You next inquire whether the Sangamon County public defender may be appointed to serve on a part-time basis. Section 3-4007 of the Counties Code (55 ILCS 5/3-4007 (West 1992)) provides for the compensation of the public defender:

"The Public Defender shall be paid out of the county treasury as the sole compensation for his services a salary in such amount as shall be fixed by the County Board which salary in counties of less than 500,000 population but in excess of 100,000 shall not be less than 40% nor more than 100% of the compensation of the State's Attorneys of such counties and in counties of 100,000 or less population shall not be less than 25% nor

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more than 100% of the compensation of the State's Attorneys of such counties. When a Public Defender in a county of 30,000 or more population is receiving not less than 90% of the compensation of the State's Attorney of such county, that Public Defender shall not engage in the private practice of law. In cases where 2 or more adjoining counties have joined to form a common office of Public Defender, the salary of the Public Defender shall be set and paid as provided by a joint resolution of the various county boards involved." (Emphasis added.)

Pursuant to the language quoted immediately above, the county board is required to fix the compensation of the public defender as a percentage of the State's Attorney's salary. Thus, for counties the size of Sangamon County, the county board may establish the public defender's salary in an amount currently ranging from 40% to 100% of the State's Attorney's salary. This grant of discretion was made to allow the several county boards a degree of flexibility and the opportunity to set the public defender's salary in direct correlation to the amount of time the public defender spends carrying out his or her official duties. (See Remarks of Rep. Cullerton, October 15, 1985, House Debate on House Bill No. 1212 (which, as Public Act 84-1059, effective July 1, 1986, amended section 3-4007 of the Counties Code to allow county boards to increase the compensation of those public defenders serving on a full-time basis) at 46.) The statute clearly contemplates that public defenders in counties over 30,000 population may serve on a part-time basis; to conclude

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otherwise would render the language underscored above meaningless. Therefore, it is my opinion that the public defender of Sangamon County may be appointed to serve on a part-time basis.

Lastly, you have inquired regarding the extent of the powers and duties granted to public defenders. It has long been recognized that a statutory officer possesses only those powers which are expressly granted by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which have been expressly granted. (Euziere v. Highway Commissioner (1931), 346 Ill. 131, 134.) Sections 3-4006, 3-4008 and 3-4010 of the Counties Code (55 ILCS 5/3-4006, 5/3-4008, 5/3-4010 (West 1992)) set forth the duties and powers of the public defender, respectively providing, in pertinent part:

"Duties of public defender. The Public Defender, as directed by the court, shall act as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel.

The Public Defender shall be the attorney, without fee, when so appointed by the court under Section 1-20 of the Juvenile Court Act or Section 1-5 of the Juvenile Court Act of 1987 or by any court under Section 5(b) of the Parental Notice of Abortion Act of 1983 for any party who the court finds is financially unable to employ counsel.

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"Assistants in counties under 1,000,000. The Public Defender in counties with a population under 1,000,000 shall have power to

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appoint, in the manner directed by the judges mentioned in Section 3-4004 the number of assistants, all duly licensed practitioners, that those judges deem necessary for the proper discharge of the duties of the office, who shall serve at the pleasure of the Public Defender. He shall also, in like manner, appoint the number of clerks and other employees necessary for the due transaction of the business of the office. * * *

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"The Public Defender in counties with a population under 1,000,000 shall keep a record of the services rendered by him and prepare and file monthly with the County Board a written report of such services transmitting a copy of such report to the clerk of the Circuit Court for the judges thereof. In cases where 2 or more adjoining counties have joined to form a common office of Public Defender, the Public Defender so appointed shall file his monthly report with each of the several county boards involved."
(Emphasis added.)

Under the provisions of section 3-4006, it is the public defender's duty, when so directed by the court, to act as an attorney, without fee, for those indigent persons who are held in custody or who are charged with the commission of a criminal offense, and for those indigent minors who have been appointed counsel under the specified sections of the Juvenile Court Act of 1987 (705 ILCS 405/1-5 (West 1992)) or the Parental Notice of Abortion Act of 1983 (720 ILCS 520/5 (West 1992)). The Code of Criminal Procedure of 1963 (725 ILCS 5/100-1 et seq. (West 1992)) further provides that the public defender shall represent indigent persons before arraignment (725 ILCS 5/113-3 (West 1992)),

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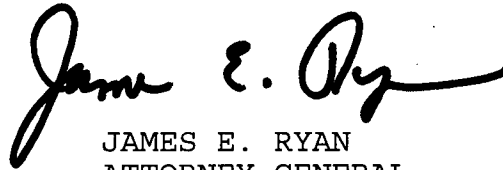
on appeal (725 ILCS 5/121-13 (West 1992)) and at post-conviction hearings, for the limited purpose of attacking substantial constitutional errors in the proceeding in which the defendant was convicted. (725 ILCS 5/122-1, 5/122-4 (West 1992); 1980 Ill. Att'y Gen. Op. 114.) Under section 3-4008 of the Code, it is the duty of the public defender to appoint the assistant public defenders for the county, in the number and manner prescribed by the court, and to employ such clerks and other employees as may be necessary for the transaction of business. Lastly, section 3-4010 provides that the public defender is required to maintain a record of the services rendered by his or her office and to file a written report monthly with the county board and the clerk of the circuit court summarizing those services.

As previously noted, where the language of a statute is clear and unambiguous, it should be given effect as written. It is my opinion that the statutory duties of the public defender include, at a minimum, acting as an attorney for indigent persons in criminal cases and certain specified juvenile and civil proceedings, appointing assistant public defenders, employing such other employees as may be necessary for transacting business, maintaining a record of the services rendered and filing monthly

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reports with the county board and circuit court clerk of the
appropriate county or counties.

Sincerely,

A handwritten signature in black ink, reading "James E. Ryan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

JAMES E. RYAN
ATTORNEY GENERAL