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FILE NO. S-1369

CRIMINAL LAW AND PROCEDURE:
Scope of "Public Service Work"
Which May Be Assigned to
Probationers

Honorable Edward Petka
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Courthouse
Joliet, Illinois 60431

Dear Mr. Petka:

You have asked for my interpretation of a recent amendment to the Unified Code of Corrections. This provision, subsection 5-6-3(b)(10) of the Code (Ill. Rev. Stat. 1977 Supp., ch. 38, par. 1005-6-3(b)(10)) allows a court, as a condition of probation, to require that the probationer "perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities." An identical provision, with

Honorable Edward Petka - 2.

a proviso regarding the location of the work, appears in subsection 5-3(2)(n) of the Juvenile Court Act (Ill. Rev. Stat. 1977, ch. 37, par. 705-3(2)(n)). Your question is whether such "public service work" must be for a governmental unit, or could be for a nonprofit, charitable organization. In my opinion, a probationer could be assigned to work of the latter kind, under proper conditions described below.

The provision in question was added by Public Act 80-711 (House Bill 92). Its companion measure, House Bill 91 (Public Act 80-710, "AN ACT to authorize county boards of the several counties in Illinois and the various probation departments thereof to develop programs of public service employment", found in Ill. Rev. Stat. 1977, ch. 38, par. 204a-1) authorizes county boards "to establish and operate agencies to develop and supervise programs of public service employment for those persons placed by the court on probation or supervision". That Act further provides that:

" * * *

(b) The programs shall be developed in cooperation with the circuit courts for the respective counties developing such programs and

Honorable Edward Petka - 3.

shall conform with any law restricting the use
of public service work;

* * *

However, at present Illinois has no such law restricting public service work, and the term "public service work" is not defined. The Act just cited gives to the county board and the circuit court discretion to decide what kinds of work to provide; the only stated restrictions are that the work serve the public and that it be reasonable. Examples of public service work can be taken from the somewhat analogous provision in Federal law for alternative work for conscientious objectors. Subsection 6(j) of the Selective Service Act of 1948, as amended (50 U.S.C. App. § 456(j) (1970)), provides that conscientious objectors may be required to do civilian work "contributing to the maintenance of the national health, safety, or interest". A Federal regulation provides that the following may be considered appropriate alternative work:

"

* * *

(a) Employment by the U. S. Government, or by a State, Territory, or possession of the United States or by a political subdivision thereof, or by the District of Columbia;

(b) Employment by a nonprofit organization, association, or corporation which is primarily engaged either in a charitable activity conducted for

Honorable Edward Petka - 4.

the benefit of the general public or in carrying out a program for the improvement of the public health or welfare, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association, or corporation, or for increasing the membership thereof; or

(c) Employment in an activity of an organization, association, or corporation which is either charitable in nature performed for the benefit of the general public or is for the improvement of the public health or welfare, including educational and scientific activities in support thereof, and when such activity or program is not for profit." (32 C.F.R. § 1660.5 (1977).)

These seem to be reasonable examples of "public service work," though they do not necessarily exhaust the category. The cases decided under the Federal Act and regulation indicate that many conscientious objectors are assigned to non-governmental employment, such as in hospitals. Such work obviously has the advantage of requiring little or no supervision by governmental bodies since it fits into an existing private work situation. It is also generally considered to be work that serves the public. Thus the county board and circuit court could establish a program either limited to work for governmental units, or also including work for private nonprofit agencies.

However, a probationer should not be assigned to work for an organization whose religious nature or affiliations violate

Honorable Edward Petka - 5.

the probationer's beliefs. Such an assignment might violate the guarantees of religious freedom in the United States and Illinois Constitutions.

Very truly yours,

A T T O R N E Y G E N E R A L