



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 3, 1976

ATTORNEY GENERAL OPINION NO. 76-355

Mr. Lyndus A. Henry  
Johnson County Counselor  
Johnson County Courthouse  
Box 31-A  
Olathe, Kansas 66061

Re: Aid to Indigent Defendants--Amount of Compensation--  
Fund from which Payable

Synopsis: The decision of the Board of Supervisors of Panels to Aid Indigent Defendants regarding the amount of compensation to which an attorney is entitled to for services provided to an indigent defendant or movant for post conviction relief after appointment by the district court is final, and binding upon counsel and the court which appointed counsel, and no payment of compensation in excess of that approved by such Board from any fund other than the "aid to indigent defendants fund" is authorized by law.

\* \* \*

Dear Mr. Henry:

You inquire concerning the award of compensation to Mr. Lawrence E. Sheppard for services provided by Mr. Sheppard to Thomas P. Lamb, who is serving three consecutive life sentences at the Kansas State Penitentiary, commencing in June, 1970, after conviction of murder and two counts of kidnapping in the Johnson County District Court, case no. 6391.

On February 13, 1975, Judge Riggs appointed Mr. Sheppard to assist Lamb with post-conviction proceedings which Lamb had filed, claiming that he is a transsexual and that his sentences were illegal because

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the State of Kansas had failed to treat this claimed condition, with the result that continued incarceration constituted cruel and unusual punishment. After extended research, Mr. Sheppard recommended that Lamb exhaust his administrative remedies respecting his claim of denial of medical treatment. In addition, Mr. Sheppard assisted the petitioner by obtaining credit toward his sentence for the time in custody prior to sentencing in June, 1970.

Thereafter, Judge Smith ruled that the case was an exceptional one, under the standards of the Board of Supervisors of Panels for Indigent Defendants, and Mr. Sheppard submitted his claim to the Judicial Administrator in the amount of \$1,107.00. The Board of Supervisors subsequently approved payment of \$500.00 as the maximum authorized compensation for an indigent proceeding pursuant to K.S.A. 60-1507. You advise that both the court and the board of county commissioners are clearly satisfied that Mr. Sheppard provided services which warrant the additional claimed compensation in excess of \$500.00. The question which is posed is whether the county general fund is obligated to pay attorney's fees which are awarded by the court in excess of that approved by the Board of Supervisors of Panels to Aid Indigent Defendants.

Chapter 145, Laws of 1976 (K.S.A. 1976 Supp. 22-4507) commences thus:

"An attorney who performs services for an indigent person, as provided by this act, shall at the conclusion of such service or any part thereof be entitled to compensation for his or her services and to be reimbursed for expenses reasonably incurred by such person in performing such services. *Compensation for services shall be paid in accordance with standards adopted by the board of supervisors of panels to aid indigent defendants.*"  
[Emphasis supplied.]

K.S.A. 22-4512 commences thus:

"There is hereby created in the state treasury a fund to be known as the 'aid to indigent defendants fund,' to be made up of all moneys credited to it as provided by law. *All authorized claims for services and expenses of counsel . . . shall be paid from such fund.*" [Emphasis supplied.]

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The payment of compensation to counsel appointed to represent indigent defendants and movants seeking post-conviction relief is governed exclusively by this act, both as to the amount of compensation and the fund from which it shall be paid. Rule No. 404 of the Kansas Supreme Court acknowledges and implements this exclusive state control of the subject:

"The judicial administrator on his own initiative may and at the request of any claimant he shall withhold payment of any claim filed for services performed on the magistrate, county and district court level until such claim is reviewed by the board of supervisors of panels. Upon review the board of supervisors of panels shall determine the amount of claim to be paid, taking into consideration the time and effort reasonably justified by the nature and difficulty of the issues involved in the case and the time reasonably necessary to prepare and present the same, and *such decision by the board shall be final.*" [Emphasis supplied.]

Thus, counsel who are appointed to provide representation to indigent persons under the act have no lawful claim to compensation from public funds in excess of that which is approved by the Board of Supervisors of Panels to Aid Indigent Defendants. The decision of the Board is binding upon both counsel and the court which appointed the attorney under Rule 404, and the District Court may not avoid the binding force of the Board's determination by making a further award from another fund than the "aid to indigent defendants fund," such as the county general fund. Thus, in my judgment, the award in excess of \$500 would not be a lawful claim upon the county general fund.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj