

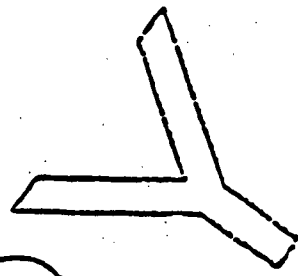


**TYRONE C. FAHNER**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

April 20, 1981

FILE NO. 81-008

JUDICIAL SYSTEM;  
Final Determination of Fees  
to an Appointed Attorney



Honorable Alan C. Downen  
State's Attorney  
Hamilton County  
McLeansboro, Illinois 62859

Dear Mr. Downen:

I have your letter wherein you inquire whether under subsection 113-3(c) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1980 Supp., ch. 38, par. 113-3(c)), the county board has the right to make the final determination as to what fees to allow to an attorney appointed to defend an indigent, and whether the State's Attorney has the right to contest a verified statement of services rendered. For the reasons hereinafter stated, it is my opinion that the county board does not have the right to make the final determination of fees. The State's Attorney may, however, contest a verified statement of services filed pursuant to subsection 113-3(c).

Subsection 113-3(c) of the Code of Criminal Procedure of 1963 provides as follows:

"(c) Upon the filing with the court of a verified statement of services rendered the court shall order the county treasurer of the county of trial to pay counsel other than the Public Defender a reasonable fee. In counties with a population of not more than 2,000,000, the court shall consider all relevant circumstances, including but not limited to the time spent while court is in session, other time spent in representing the defendant, and expenses reasonably incurred by counsel. In counties with a population greater than 2,000,000, the court shall order the county treasurer of the county of trial to pay counsel other than the Public Defender a reasonable fee stated in the order and based upon a rate of compensation of not more than \$30 for each hour spent while court is in session and not more than \$20 for each hour otherwise spent representing a defendant, and such compensation shall not exceed \$150 for each defendant represented in misdemeanor cases and \$1000 in felony cases, in addition to expenses reasonably incurred as hereinafter in this Section provided, except that, in extraordinary circumstances, payment in excess of the limits herein stated may be made if the trial court certifies that such payment is necessary to provide fair compensation for protracted representation. A trial court may entertain the filing of this verified statement before the termination of the cause, and may order the provisional payment of sums during the pendency of the cause."

It is clear from the language of the provision that the determination of the fees to be allowed an appointed attorney, is a judicial function. (People v. Sanders (1974), 58 Ill. 2d 196, 201; People v. Atkinson (1977), 50 Ill. App. 3d 860, 869.) The intent of the General Assembly to give the court, and not the county board, the power of final determination of fees is further supported by section 1 of "AN ACT to require counties to appropriate for the payment of costs, expenses and legal services for indigent defendants in felony cases"

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(Ill. Rev. Stat. 1979, ch. 34, par. 5609) which provides:

"It shall be the duty of the county board in counties containing fewer than 500,000 inhabitants to appropriate a sufficient sum for the purpose of paying for the legal services necessarily rendered for the defense of indigent persons in felony cases, and for costs, expenses and legal services necessary in the prosecution of an appeal when the sentence is death, which is to be paid upon the orders of a court of competent jurisdiction. It shall likewise be the duty of the county board in counties containing fewer than 500,000 inhabitants to appropriate a sufficient sum for the payment of out of pocket expenses necessarily incurred by appointed counsel in the prosecution of an appeal on behalf of an indigent incarcerated defendant in felony cases. In such cases payment shall be made upon the order of the reviewing court."

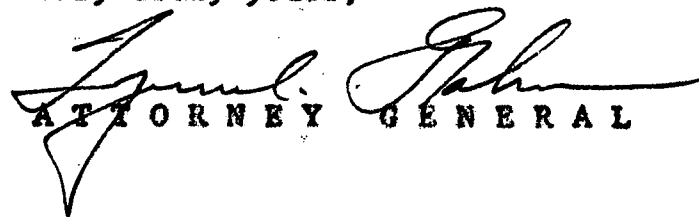
Your second question is whether the State's Attorney has the right to contest the verified statement of services rendered filed by an attorney appointed to defend an indigent. An attorney appointed to defend an indigent is authorized by subsection 113-3(c) to file a verified statement of services rendered. With this statement the attorney may include exhibits supporting his claim for fees. (People ex rel. Conn v. Randolph (1966), 35 Ill. 2d 24, 28.) The State's Attorney can file a motion in opposition to the defense attorney's statement of services and present evidence showing the amount of work actually performed by the defense attorney. (People v. Harflinger (1977), 45 Ill. App. 3d 479.) The State's Attorney may also file an appeal from an order for payment of fees. People v. Zuniga (1964), 31 Ill. 2d 429, U.S.

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cert. denied, 380 U.S. 977.

Therefore, it is my opinion that a State's Attorney may contest a verified statement of services rendered filed pursuant to subsection 113-3(c) of the Code of Criminal Procedure of 1963.

Very truly yours,

  
ATTORNEY GENERAL