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FILE NO. 80-026

OFFICERS:
Public Defender

Honorable C. David Vogel
State's Attorney
Livingston County
Courthouse
Pontiac, Illinois 61764

Dear Mr. Vogel:

I have your letter in which you ask whether, pursuant to section 4 of "AN ACT in relation to the office of Public Defender" (Ill. Rev. Stat. 1979, ch. 34, par. 5604), the local Public Defender must be appointed to represent incarcerated indigent residents of the Pontiac Correctional Center who file petitions in Livingston County Circuit Court seeking relief related to the conditions of their imprisonment. Such petitions are filed under "AN ACT to revise the law in relation to habeas corpus" (Ill. Rev. Stat. 1979, ch. 65, par. 1 et seq.), "AN ACT to revise the law in relation to injunction" (Ill. Rev. Stat. 1979, ch. 69, par. 1 et seq.), and "AN ACT to revise the law in relation to mandamus" (Ill. Rev. Stat. 1979, ch. 87, par. 1 et seq.). You also ask whether the Livingston County Board

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is required to provide funding to the local Public Defender for the representation of correctional residents filing such petitions.

In my opinion the Public Defender Act does not require, or indeed authorize, appointment of the Public Defender to represent the petitioners in such actions. That answer necessarily disposes of your second question.

Section 4 of "AN ACT in relation to the office of Public Defender" (Ill. Rev. Stat. 1979, ch. 34, par. 5604) states in pertinent part:

"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 Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 1-1 et seq.) further provides that the Public (or Appellate) Defender shall represent indigent persons before arraignment (Ill. Rev. Stat. 1979 Supp., ch. 38, par. 113-3), on appeal (Ill. Rev. Stat. 1979, ch. 38, par. 121-13), and at a post-conviction hearing, which is available only for the limited purpose of attacking substantial constitutional errors in the proceeding in which the defendant was convicted. Ill. Rev. Stat. 1979, ch. 38, pars. 122-1, 122-4; People v. Ashley (1966), 34 Ill. 2d 402, 411; People v. Vail (1970),

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46 Ill. 2d 589, 591.

You advise that the petitions filed by the Pontiac residents essentially present claims related to prison conditions and allegations of violations of the residents' civil rights in this context. As you point out, actions for habeas corpus, mandamus and injunction are civil in nature. Ill. Rev. Stat. 1979, ch. 65, par. 32; Ill. Rev. Stat. 1979, ch. 85, par. 11; Miollis v. Schneider (1968), 77 Ill. App. 2d 420.

The statutory provisions authorizing the appointment of the Public Defender apply by their terms to the representation of persons arrested for, or charged with, the commission of a criminal offense. They also implement the State's obligation, under the fifth and fourteenth amendments to the Federal Constitution, to provide counsel for indigents during custodial interrogation (Miranda v. Arizona (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694); its obligation, under the sixth and fourteenth amendments, to provide counsel at trial and at all "critical stages" of prosecution (Gideon v. Wainwright (1963), 372 U.S. 335, 83 S.Ct. 792, 9 L. Ed. 2d 799; Fuller v. Oregon (1974), 417 U.S. 40, 94 S.Ct. 2116, 40 L. Ed. 2d 642); and its obligation, under the equal protection clause of the fourteenth amendment, to provide counsel for an appeal of right. Douglas

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v. California (1963), 372 U.S. 353, 83 S.Ct. 814, 9 L. Ed. 2d 811.

Section 122-4 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 122-4), relating to post-conviction hearings, is the only statutory provision authorizing the appointment of the Public Defender in a civil proceeding involving an adult. Insofar as the petitions filed by the Pontiac residents involve matters arising from their incarceration, they are outside the scope of section 122-4.

Furthermore, section 8 of article I of the Illinois Constitution of 1970 states in pertinent part:

"In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel * * * ." (Emphasis added.)

The Illinois courts have consistently held that there is no right to the assistance of appointed counsel in civil proceedings such as petitions for habeas corpus. People ex rel. Ross v. Ragan (1945), 391 Ill. 419; People ex rel. Bottoms v. Brantley (1974), 17 Ill. App. 3d 925; People ex rel. McGuire v. Sympson (1974), 10 Ill. App. 3d 139, 140.

Nothing in Bounds v. Smith (1977), 430 U.S. 817, 97 S.Ct. 1491, 52 L. Ed. 2d 72, where the United States Supreme Court held that prisoners have a fundamental right of access to the courts under the due process clause of the fourteenth

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amendment, states or implies that prisoners have any right under the Federal Constitution to be represented by the Public Defender on claims such as you describe. See Bounds.

It is therefore my opinion that the statutory duties of the Public Defender do not include the representation of residents of correctional facilities who file petitions for habeas corpus, mandamus or injunction, which relate to the conditions of their incarceration. It is also my opinion that residents of correctional facilities have no right, under either the Illinois Constitution of 1970 or the United States Constitution, to be represented by the Public Defender in such actions.

Very truly yours,

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