

August 1, 2000
OPINION 00-247

Honorable Perrell Fuselier
City Court Judge
City Court of Oakdale
P. O. Box 565
Oakdale, LA 71463

15 Courts
53-2 Indigent Defendants
R.S. 15:146
R.S. 15:146 mandates certain city court funds be forwarded to the judicial district indigent defender fund monthly by the tenth day of the succeeding month. The city court judge is without authority to withhold these funds in order for the city court to pay the court-appointed attorneys for the minor or the indigent parents.

Dear Judge Fuselier:

This office is in receipt of your correspondence of recent date, requesting we review the facts provided and advise whether the attorneys appointed to represent minors and indigent parents in juvenile proceedings involving the termination of parental rights are required to be reimbursed by the local judicial district indigent defender board.

We adhere to certain policies concerning the issuance of legal opinions from this office. By statute, this office is required to render written opinions to certain elected and appointed state officers upon all legal questions related to the duties of such officers. However, it is the policy of this office to refrain from issuing formal opinions where the matter is the subject of pending or ongoing litigation. We are advised by Mr. Steve Mayer, General Counsel, Department of Social Services, (225-342-1125) that R.S. 46:460.21 (concerning legal fees in child protection cases) is the subject of a constitutional challenge currently under review by the court. For this reason, we decline to issue a formal opinion addressing this particular issue at this time.

Please note the case of State in the Interest of Johnson, 475 So.2d 340 (La. 1985) may prove of interest to you. DHHR (now DSS) argued in Johnson that the attorney's fees should be paid by the local indigent defender board because the indigent parents in an abandonment proceeding were in a position analogous to that of criminal defendants. The Court responded:

Aside from the frequently common characteristic of indigency, however, the department does not explain how the two classes of litigants are alike. In fact, they are quite dissimilar in that one is a class of civil litigants contesting termination of parental rights while the other is a class of persons charged with a broad range of crimes including the most violent and most severely punishable of offenses. The analogy drawn by the trial and appellate courts between two classes of indigent parents in civil

proceedings to terminate parental rights based on similar and overlapping grounds is much closer. Additionally, the department's solution would have the drawbacks of removing responsibility for payment of costs from the entity which initiated the proceeding, diverting local funds necessary for criminal prosecutions, and taxing costs to an entity which is not a party and which is not involved in any way that would permit it to anticipate and plan for such expenditures. See Johnson, supra, at page 342.

Finally, R.S. 15:146¹ mandates certain city court funds be forwarded to the judicial district indigent defender fund monthly by the tenth day of the succeeding month. The city court judge is without authority to withhold these funds in order for the city court to pay the court-appointed attorneys for the minor or the indigent parents.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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¹ **R.S. 15:146 provides in pertinent part:**

§ 146 Judicial district indigent defender fund

- A. There is hereby created within each judicial district an indigent defender fund which shall be administered by the district board and composed of funds provided for by this Section and such funds as may be appropriated or otherwise made available to it.
- B. (1) Every court of original criminal jurisdiction, except in the town of Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having a population of less than four thousand, shall remit the following special costs to the district indigent defender fund for the following violations, under state statute as well as under parish or municipal ordinance. The following costs shall be assessed in cases in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond, and shall be in addition to all other fines, costs, forfeitures imposed:

* * * * *

- (2) Such amounts shall be remitted by the respective recipients thereof to the judicial district indigent defender fund monthly by the tenth day of the succeeding month.

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53-3 Indigent Defendants

R.S. 15:146

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Date Received:

Date Released: August 1, 2000

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL