



July 20, 2000

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Larry Mamula
Executive Director
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RE: Permissibility of Contracts for Public Defender Services by LSC
Recipients, External Opinion Number EX-2000-1017

Dear Mr. Mamula:

I am writing in response to your electronic mail inquiry to Danilo Cardona, dated May 17, 2000. In your letter you asked whether a recipient program may procure a contract with a county government to provide "Public-Defender type services," in cases where applicants present a conflict of interest to the local public defender's office. You stated that the bulk of the work under the contract would be for child abuse and neglect cases, but the contract would also require representation in some criminal cases.

As you pointed out in your letter, 45 CFR Part 1613.3 generally prohibits the use of Corporation funds to provide legal assistance in criminal proceedings. Part 1613.4 allows exceptions where (a) the assistance is provided pursuant to a court appointment made under a statute or court rule or practice of equal applicability to all attorneys in the jurisdiction, if such representation is authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or (b) when professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

Notwithstanding the prohibition of Part 1613, the Legal Services Corporation Act As Amended 1977, permits recipients to have public defender programs, provided that such programs are separately funded. Section 1010 (c) of the Act states that:

Non-Federal funds received by the Corporation, and funds received by

any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this title, except that this provision shall not be construed . . . to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or *with legal aid societies having separate public defender programs*, for the provision of legal assistance to eligible clients under this title. [Emphasis added.]

Part 1610 of the Regulations of the Legal Services Corporation, which became effective June 20, 1997, provides further confirmation that separately funded public defender programs are permissible. Part 1610.3 prohibits recipients from using non-LSC funds for any purpose prohibited by the Act or for any activity prohibited by or inconsistent with Section 504, “unless such use is authorized by §. . .1610.6. . . .”

Part 1610.6 states that:

Notwithstanding §1610.7(a)¹, the prohibitions referred to in §§ 1610(a)(4) (Criminal Proceedings); (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens); or (b)(11) (Prisoner litigation) of this part will not apply to: (a) A recipient’s or sub-recipient’s *separately funded public defender program or project*; . . . [Emphasis added.]

Thus the LSC Act and Regulations clearly permit recipients to have public defender programs, provided that such programs are financed with non-LSC funds. Black Hills Legal Services is therefore not prohibited by Part 1613 from bidding on the county contract for “Public-Defender type services.” In the event that your bid is accepted and you wish to create a public defender program with the county funds, it might be useful to speak with Executive Directors of other recipient programs which have separately funded public defender programs. Several Executive Directors with whom you might speak are C. Lyonel Jones of the Legal Aid Society of Cleveland (216-687-1900); Deierdre Weir of the Legal Aid and Defender Association of Detroit (313-965-9419); and/or F. Dianne Taylor of Legal Services of Eastern Missouri (314-534-4200).

I hope this information is helpful. If you have additional questions, please do not hesitate to contact the Office of Legal Affairs.

¹ Section 1610.7 generally provides that if a recipient transfers LSC funds to another person or entity, the prohibitions of •1610.3 apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred, with a few modifications. Please see the full text of •1610.7 for a complete statement of the restriction and modifications.

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel