

85-00462

# OFFICE OF THE ATTORNEY GENERAL



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AUG 6 1985

Honorable Allen L. Tapley  
Administrative Director  
of Courts  
817 South Court Street  
Montgomery, Alabama 36130

Attorney's Fees - Indigents -  
Fair Trial Tax.

An attorney appointed to assist  
an indigent suspect after a Miranda  
warning may be paid from the Fair  
Trial Tax fund for his services  
even though there is no subsequent  
charge or criminal case.

Dear Sir:

Your request for an opinion of the Attorney General inquires  
as follows:

"If a criminal suspect, after having been advised  
of his rights as provided in the Miranda decision,  
requests the assistance of court-appointed counsel,  
and the trial court judge does appoint counsel to  
assist him and the suspect is subsequently not  
charged with the offense, may a claim for fees and  
services rendered by the attorney, once approved  
by the trial court judge, be processed and paid by  
the State Comptroller from the Fair Trial Tax Fund?"

"What would be an appropriate waiting period for an  
attorney appointed in such an instance to hold a  
claim for fees and services prior to submitting it  
to the court and the State Comptroller for payment?"

In my opinion, your first question should be answered in the affirmative.

Your second question is answered by stating that the trial judge in approving or disapproving such claim would also be deciding whether an appropriate waiting period has elapsed.

In my opinion, the principal purpose of the Fair Trial Tax (§12-19-250 et seq. Code of Alabama 1975, and as amended) is to pay for counsel for indigents. When an indigent is interrogated as a suspect good police practice requires that he be given a warning in accordance with Miranda v. Arizona, 384 U.S. 436. This warning promises an attorney present during questioning if the indigent so requests and before further questioning.

In my opinion, the judge of a prospective trial court may designate an attorney to counsel the indigent at this point even before a charge is made. In my opinion, the legislature intended that such counsel be paid.

While the interrogated suspect may never be charged with an offense and there may never be a trial and a disposition of a "case" the attorney has nevertheless performed his function and should be paid according to the intent of the legislature.

While the statutes (§15-12-21(e)) are framed authorizing counsel to present his bill for services "within a reasonable time after the conclusion of the trial...or other judgment disposing of the case" for approval by the trial judge and submission through the clerk to the state comptroller and state treasurer, in the case described there is no conclusion of the trial, there being no trial due to no charge being placed against the indigent suspect. The matter is concluded, however, there being no charge.

In my opinion, it being the intent of the legislature that such counsel be paid, such counsel may present his bill for services as if a trial had been concluded, and such bill or claim should be handled and paid from the Fair Trial Tax Fund and after approval by the appointing judge in the usual way and as if a trial had been concluded.

I do not know the length of any specific waiting period for such attorney to delay in presenting his bill for services to the appointing judge. In my opinion, the approval or disapproval

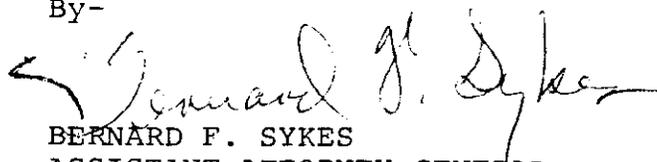
Honorable Allen L. Tapley  
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of the bill by the appointing judge would indicate that there has been, or has not been, a sufficient intervening time to be reasonably sure there will be no indictment or other charge.

Very truly yours,

CHARLES A. GRADDICK  
ATTORNEY GENERAL

By-

A handwritten signature in cursive script, appearing to read "Bernard F. Sykes", with a long horizontal flourish extending to the right.

BERNARD F. SYKES  
ASSISTANT ATTORNEY GENERAL

BFS:pkp