

July 20, 2000

Larry Mamula
Executive Director
Black Hills Legal Services, Inc.
P.O. Box 1500
Rapid City, South Dakota 57709-1500

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, ex

Sincerely,

Dawn M. Browning
Assistant General Counsel

Victor M. Fortuno
General Counsel