

OFFICE OF LEGAL AFFAIRS
EXTERNAL OPINION

External Opinion # EX-2004-1002

To: Lee Richardson
Deputy Director
Legal Aid of Arkansas
714 S. Main St.
Jonesboro, AR 72401

Date: February 17, 2004

Subject: **Representation of Persons in Actions Under Arkansas Criminal Eviction Statute**

You requested an Opinion from this Office regarding the permissibility of your program representing persons facing eviction of Arkansas' criminal eviction statute.

Brief Answer

Yes. The Arkansas criminal eviction statute, A.C.A. §18-16-101, although nominally criminal, is not a "criminal proceeding" for the purposes of 45 CFR Part 1613. Legal Aid of Arkansas may represent persons facing eviction and prosecution under that statute.

Background

Arkansas has a criminal eviction statute that is commonly used in place of Arkansas' civil eviction statute. Under the criminal statute, "..."

Analysis

LSC regulations prohibit a recipient from using Corporation funds to “provide legal assistance with respect to a criminal proceeding . . .”¹ 45 CFR 1613.3. Thus, the basic question being presented here is whether A.C.A. §18-16-101 is a criminal proceeding for the purposes of Part 1613.

The regulation defines “criminal proceeding” as:

The adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated “criminal” by applicable law and punishable by death, imprisonment, or a jail sentence.

The preamble to the rule provides the following regarding the definition:

Many minor infractions . . .

violations, that are punishable by no more than a fine, are basically civil in

Based on this legislation and regulations history, the Office of the Auditor General, 2004

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General Counsel

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