

et al v. Mayor and City Council of Baltimore, et al, supra. Thus, a city was held without lawful authority to enter into a contract with a labor organization representing its employees which provided for the arbitration of vacation rights of its employees. *Fellows, et al v. LaTronica*, 377 Pac. 2d 547 (Colo. 1962).

However, there is authority for the proposition that a state legislature may provide by law for public employees to enforce their rights to collective bargaining by arbitration. *City of Manchester v. Manchester Teachers Guild, et al*, 131 A. 2d 59 (N.H. 1957).

An examination of the provisions of the School Code of 1955, *supra*, and Act 336, P.A. 1947, *supra*, compels the conclusion that the legislature has not in either act conferred authority, express or implied, by which the boards of education could agree to compulsory arbitration.

Therefore, it is the opinion of the Attorney General that boards of education are without lawful authority to include in their master contracts with representatives of their employees a provision for compulsory arbitration.

FRANK J. KELLEY,
Attorney General.

670612.1

APPEALS: Cost of Appellate Counsel and Transcript.

Except in certain exceptional cases where the appellant has been convicted for crimes perpetrated while in the actual custody of the Michigan Corrections Commission.

As the basic unit in the administration of criminal justice, the county must bear the expenses of appellate counsel and transcripts provided for indigent defendants under G.C.R. 1963, 785.4(1).

The state should reimburse the county for counsel, transcript and other costs in appeal when the court has ordered these to be paid for a defendant convicted of a crime while a prisoner in a state penal institution, the state having assumed a particular responsibility in this area.

No. 4588

June 12, 1967.

Mr. George Washington
Director
Department of Administration
Lewis Cass Building
Lansing, Michigan 48913

The question has arisen as to whether the state is required to reimburse counties for the costs involved in making an appeal. Article I, §20 of the Constitution of 1963 states that:

"In every criminal prosecution, the accused shall have the right . . . to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal."

It should be noted that, while this provision allows the defendant an appeal as a matter of right, it does not require this appeal to be taken at public expense. The last clause permits "reasonable assistance" only when "the trial court so orders." Thus an element of discretion is given to the court in determining whether or not public funds shall be provided for defendants on appeal.

Notwithstanding the discretion given by Article I, §20, the Supreme Court has recently adopted a Court Rule which requires that:

"Hereafter, immediately upon sentencing, the court shall advise the defendant in open court that he is entitled as a matter of constitutional right to appellate review of his conviction and that, if defendant is financially unable to provide counsel to perfect such appeal, the court will appoint counsel for him and will furnish counsel with such portions of the trial transcript counsel requires to prepare postconviction motions and to perfect an appeal. . . ." G.C.R. 1963, 785.4(1)

The situation of most prisoners would be governed by G.C.R. 1963, 785.4(2), concerned with delayed appeals, which also requires the court to furnish counsel and transcript if the defendant is "indigent." Here, of course, there remains a degree of discretion to the extent that a delayed appeal:

". . . shall affirmatively show, by statement of facts and brief, that there is merit in the claim of appeal . . ." G.C.R. 1963, 806.4(2)

Traditionally, the county has been the basic unit in the administration of criminal justice. The judicial circuits are drawn along county lines and counties are required by statute to bear the expenses of certain courtroom facilities (M.S.A. §27A.551), circuit court commissioner salaries (M.S.A. §27A.1067), stenographer's salaries (M.S.A. §27A.114), juror's compensation (M.S.A. §27A.1231), and fees for attorneys appointed by the court to defend persons who cannot procure counsel for themselves (M.S.A. §28.1253). It is difficult to find a basis for the contention that the state must now reimburse the county for appellate expenses. The Supreme Court has ruled on this in the case of *People v. Hanifan*, 99 Mich. 516 (1894), in which it was said:

"But the question here presented is one of power in this Court to allow the claim, and we are of the opinion that, in overlooking the provisions of the Constitution above quoted, we were in error in holding that the claim might be presented here. It must go before the board of auditors of Wayne county, and that board alone has jurisdiction and can determine the amount proper to be allowed for the services rendered, and not this Court or the court below."

See also *DeLong v. Board of Supervisors of Muskegon County*, 111 Mich. 568, which required county compensation for representation in the Supreme Court in criminal cases if in the opinion of the circuit court the case should have been appealed.

The right to free counsel and transcripts comes from the court rule which expresses constitutional guarantees. The rule basically governs the procedure in the lower courts and carries no implication that the general

pattern of county responsibility for the financing of the circuit trial courts should be departed from. Attention should also be called to Article IX, §17 of the 1963 Constitution which provides:

“No money shall be paid out of the state treasury except in pursuance to appropriations made by law.”

Therefore, since no specific legislative provision exists obligating the state to reimburse the county for the appeal costs permitted in the constitution and required in certain cases by court rule, the state has no responsibility in this area.¹

The exceptional situation presented by C.L. 1948, §768.7 requires a somewhat different analysis. That section and the preceding one, §768.6, are concerned with crimes and offenses committed by persons confined in state penal institutions. After establishing a slightly different procedure, the statute provides that:

“All jurors’ fees, witness fees and fees of attorneys appointed by the court under the statute, for the defendant, shall be approved by the circuit judge and audited and allowed by the board of state auditors and paid by the state treasurer upon the warrant of the Auditor General.” C.L. 1948, §768.7; being M.S.A. §28.1030

It should be noted that this provision was in effect before the public payment of appellate expenses was recognized in the new Constitution and Supreme Court Rules. The phrase “appointed by the court under the statute” presumably referred to C.L. 1948, §775.16; being M.S.A. §28.1253, which permitted the judge to appoint counsel to defend a person unable to procure an attorney in criminal cases. This law was later amended by Act No. 256, P.A. of 1957 which made such an appointment for indigents mandatory. Thus, M.S.A. §28.1030, when enacted, provided for the state to pay the expenses of trials which were then recognized as legitimate costs otherwise paid by the county. The rationale apparently was that these persons were the direct responsibility of the state and that the state should carry the burden of expenses incident to the following of proper criminal procedures. Now that the right to appellate counsel, transcripts, etc. has been officially, although not legislatively recognized, it would seem that to remain consistent to this rationale the state in this exceptional situation should also be obligated to pay the expenses of appeal. However, it is clear that such state statutory responsibility does not extend to those who commit crimes while at liberty under the terms of parole.

As to such exceptional situation therefore it is our opinion that the statute indicates an intent on the part of the legislature in these cases to accept the financial responsibility for effecting recognized criminal procedures. Since the enactment of the law, the accepted procedures have been enlarged by the Constitution and Supreme Court Rules to include appellate counsel and other reasonable assistance to prosecute appeals. There is no reason to suspect that the rationale and policy of the older statute have been

¹ Where the Attorney General institutes criminal proceedings all costs of such proceedings may be paid by the state with the approval of the State Administrative Board, C.L. 1948, § 775.21; M.S.A. 1954 Rev. Vol. § 28.1258.

changed or should be limited by a restrictive interpretation. We would conclude then that the state should reimburse the counties not only for the jurors', witness', and attorneys' fees at the original trial but also for counsel, transcript and other costs in appeal when the court has so ordered these to be paid for a defendant convicted of a crime while a prisoner in a state penal institution.

FRANK J. KELLEY,
Attorney General.

670613.1

TAXATION: Property Tax — Exemption of corporation as "farmer."
WORDS & PHRASES: "Farmer," corporation as

A corporation, to the extent it uses personal property in agricultural operations, is a "farmer" within the intent of that term as employed in the statutory tax exemption provided by paragraph Tenth of Section 9 of the General Property Tax Law, as amended by Act 205, PA 1966.

No. 4582

June 13, 1967.

Mr. Paul M. Ladas
Prosecuting Attorney
Muskegon County
Muskegon, Michigan

You request my opinion as to whether the tangible personal property actually being used by a corporation in agricultural operations, is exempt from taxation under paragraph Tenth of Section 9 of the General Property Tax Law, as amended by Act 205, P.A. 1966, which provides as follows:

"The following personal property shall be exempt from taxation, to wit:

* * *

"Tenth, That property actually being used by a farmer in agricultural operations."

The question thus more precisely becomes: Is a corporation, to the extent it uses personal property in agricultural operations, exempt as a "farmer" under said paragraph?

Basically, it is of course established beyond question that persons may lawfully form a corporation to carry on a farming business, like any other lawful business. M.S.A. §21.3; C.L. 1948 §450.3; both as amended; see also O.A.G. 1923-24, p. 335.

Further it appears that for many years prior to the enactment of above-quoted Act 205, PA. 1966, the exemption (\$1000.00) conferred by the statutory predecessor of said paragraph Tenth of Section 9 of the General Property Tax Law, was repetitively and rather clumsily expressed, seriatim, in terms of "farm tools, farm equipment and farm stock."¹ The

¹ "Tenth, All mules, horses and cattle not over 1 year old, and all sheep and swine not over 6 months old, farm tools, farm equipment and farm stock to the value of \$1,000.00, actually used in agricultural operations."