Opinion No. 2012-047

May 22, 2012

The Honorable Andrea Lea
State Representative
Post Office Box 1342
Russellville, Arkansas 72811-1342

Dear Representative Lea:

This is my opinion on your questions about criminal procedure:

1. Does Amendment 80, Title 16 of the Arkansas Code Annotated or the Arkansas Rules of Criminal Procedure prohibit the State from filing an information directly in circuit court to prosecute a criminal defendant accused of violating only a state criminal misdemeanor charge instead of filing the information on the state criminal misdemeanor charge in district court?

2. Does Amendment 80, Title 16 of the Arkansas Code Annotated or the Arkansas Rules of Criminal Procedure prohibit the State from filing an information directly in circuit court to prosecute a criminal defendant accused of violating only a traffic violation or traffic misdemeanor charge (Title 27 violations and misdemeanors) instead of filing the information on the traffic violation or traffic misdemeanor charge in district court?

**RESPONSE**

In my opinion, the answer to both your questions is "no."

***Question 1 – Does Amendment 80, Title 16 of the Arkansas Code Annotated or the Arkansas Rules of Criminal Procedure prohibit the State from filing an information directly in circuit court to prosecute a criminal defendant accused***

***of violating only a state criminal misdemeanor charge instead of filing the information on the state criminal misdemeanor charge in district court?***

***Question 2 – Does Amendment 80, Title 16 of the Arkansas Code Annotated or the Arkansas Rules of Criminal Procedure prohibit the State from filing an information directly in circuit court to prosecute a criminal defendant accused of violating only a traffic violation or traffic misdemeanor charge (Title 27 violations and misdemeanors) instead of filing the information on the traffic violation or traffic misdemeanor charge in district court?***

As implicitly recognized by your questions, each act made a crime by state law[1] is classified as a felony, a misdemeanor, or a violation. A.C.A. § 5-1-105(b) (Repl. 2006).

Our constitution gives circuit courts original jurisdiction over all matters, civil and criminal, that are not assigned to other courts. Ark. Const. amend. 80, § 6(A). District courts have "original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and . . . such other criminal jurisdiction as may be provided" by statute. Ark. Const. amend. 80, § 7(B). The legislature is thus empowered to define the courts' criminal jurisdiction within the constitution's limitations.

Under a statute, circuit courts have original exclusive jurisdiction over felonies and original jurisdiction concurrent with district courts over misdemeanors. A.C.A. § 16-88-101(a)(3) (Supp. 2011, version effective Jan. 1, 2012). District courts have original jurisdiction concurrent with circuit courts over misdemeanors and violations. A.C.A. § 16-88-101(a)(4). Circuit and district courts thus have concurrent jurisdiction over misdemeanors and violations.[2]

I know of no requirement that a prosecutor bring a charge in a particular court that is one of several having concurrent jurisdiction. To the contrary, "the choice of an

---

[1] Your questions, and this opinion, concern only charges arising under state law. District courts have exclusive jurisdiction over certain charges arising under local ordinances. *See* A.C.A. § 16-88-101(a)(4).

[2] I reach this conclusion with respect to violations based on the plain language of the subsection describing district courts' jurisdiction, notwithstanding that the subsection describing circuit courts' jurisdiction does not refer to violations.

available forum is a matter that lies in the first instance in a prosecutor's discretion." Op. Att'y Gen. 2001-298. A statute empowers a deputy prosecutor to file an information with "any justice of the peace, municipal court judge, or the circuit court . . . charging any person with the commission of *any offense* . . . ." A.C.A. § 16-21-113(c)(1) (Repl. 1999) (emphasis added). The district courts are a continuation of the municipal courts and justice of the peace courts. Ark. Const. amend. 80, § 19(C). In my view, accordingly, the statute's references to a justice of the peace and a municipal court judge should now be taken as a reference to the district court. *See, e.g.*, Op. Att'y Gen. 2011-143 n.5.

My views on your questions are borne out by other provisions of law. Court costs, for instance, are due following a circuit court conviction of a misdemeanor or traffic violation. A.C.A. § 16-10-305(a)(1), (3) (Supp. 2011, version effective Jan. 1, 2012).

In my opinion, neither Amendment 80, Title 16 of the Code, nor the Rules of Criminal Procedure prohibits the state from filing misdemeanor or violation charges in circuit court.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh