

NOTE by AUDITOR OF THE COURT OF SESSION

Legal Aid (Scotland) Act 1967

JH

This is a taxation of a Solicitor's Account arising out of of an application for Legal Aid which was not taken up by the client.

After the lodging of the original application for Legal Aid the Law Society offered a Legal Aid Certificate limited to the obtaining of the opinion of Counsel. This offer was not taken up but the Solicitors obtained an Opinion which they used in preparing the full application for Legal Aid. After consideration a full Legal Aid Certificate was offered but because of the size of the contribution and Mrs. Hughes' desire to abandon the action proposed it was not taken up.

The account of expenses includes the Opinion and Counsel's fee for it.

The Law Society argued that the Opinion had been obtained by the client outwith the sphere of Legal Aid and accordingly the Fund should not pay for it.

The Auditor has considered the matter in the light of the Legal Aid Act and the various Acts of Sederunt.

The Legal Aid (Scotland) Act 1967 as amended by Section 6 para. 4 provides:-

"(4) Subject to the provisions of this Act (and to section 9(2) of the Legal Advice and Assistance Act 1972), a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees due to counsel for so acting (shall also be paid) out of that fund".

Para. /

Para. 5 of the same Section provides:-

"(5) Where, on an application for legal aid under section 1 of this Act in connection with any proceedings, the appropriate authority decide that the applicant is (subject to the issue and acceptance of a legal aid certificate) entitled to legal aid for the purpose of those proceedings, any solicitor who has acted for the applicant in preparing and submitting the application shall, for the purposes of the last foregoing subsection, be deemed, when so acting, to have been acting for a person receiving legal aid, notwithstanding that a legal aid certificate is not issued and accepted."

In this case the appropriate authority decided that the applicant was entitled to Legal Aid for the purpose of the proceedings so that her Solicitor in preparing and submitted the application shall be deemed to have been acting for a person receiving Legal Aid notwithstanding that the Certificate was not issued. In the opinion of the Auditor in this case obtaining of the Opinion was a reasonable step in the preparation of the application for Legal Aid. This case was a more complicated case than the run of the mill cases and the Auditor is of the view that the Opinion would have materially assisted the Committee in discussing whether or not there was a probable cause. He has accordingly allowed that part of the Account of Expenses.



*W. P. Smit*