Habeas Corpus, Costs In. Costs, Proper Charge Against County. County, Mileage and Witness Fees Proper Charge Against. Transfer of Habeas Corpus Hearing, Costs to be Paid by County in Which Same Originated.

The costs in a habeas corpus proceeding such as milaege and witness fees should be paid by the county in which the proceedings originated.

Helena, Montana, May 18, 1908.

Hon. A. P. Heywood,
. County Attorney,
'   ' Helena, Montana.

Dear Sir:—

I have your letter of May 8th, 1908, submitting for opinion of this office the following questions:

Are witness fees and mileage in habeas corpus cases proper charges against a county, and if so, should Lewis and Clark county be reimbursed by Cascade county for costs expended in the hearing of habeas corpus case made returnable under order of the supreme court before one of the judges of the first judicial district?

I advise you that the costs in a case of this character are proper charges to be paid by the county in which the matter arises. In this particular case application was made to a justice of the supreme court, which is proper under the statute, and by such justice is made returnable before a judge of the district court of Lewis and Clark county; the subpoenas under which the witnesses attended the hearing were process of 'Lewis and Clark county, and it is but proper that Lewis and Clark county should pay the mileage and per diem of witnesses brought here under its process. However, it is perfectly clear that Lewis and Clark county had no responsibility in the matter except that the supreme court designated one of its judges to hear the testimony. The sheriff of Cascade county was the person to whom the writ was directed and who had in charge the person on whose behalf the writ was issued. Certificate of the costs should be made by the judge of the first judicial district and also by the clerk of his court, and the same forwarded to the county commissioners of Cascade county with request for reimbursement.

Very truly yours,
ALBERT J. GALEN,
Attorney General.