

COUNTY ATTORNEY, Expenses Of.

Expenses necessarily incurred by the county attorney in criminal cases within the county are proper charges against the county and should be allowed by the board of county commissioners upon presentation of claims therefor duly signed and sworn to.

Helena, Mont., Dec. 15th, 1906.

Mr. Geo. E. Davis,
 Chairman Board of County Commissioners, Gallatin County,
 Bozeman, Mont.

Dear Sir:—

Your letter of the 13th inst., requesting opinion of this office, received. From your letter it appears that the county attorney of your county has filed a claim against the county which reads as follows:

April 16 to May 8, expense in procuring evidence in gambling cases	\$266.50
Sept. 11 to 25, 1906, expenses in procuring evidence in gambling cases	394.00
Total	<u>\$660.50</u>

You also state that the county attorney did not more fully itemize the claim for the reason that several cases are pending in which he did not deem it advisable at this time to show on the public records of the county the sources from which he secured the evidence that he expects to use in the trial of such cases. Upon such facts you submit the following question:

"Under section 4681 of the Political Code, have the Board of County Commissioners authority to allow said claim and is it a proper charge against the county?"

Said section 4681 reads as follows:

"The following are county charges; * * *

2. One half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county."

The supreme court of Montana, in the case of Independent Publishing Company v. Lewis & Clark County, 75 Pac., p. 861, in discussing the powers and duties of a county attorney, said:

"So far as expenses of criminal prosecutions are necessarily incurred by the county attorney, he is, by law, the agent of the county. When his duties in that regard cease on removal of a case to this court, his power to contract expenses also ceases."

From the above quotation from section 4681, and also from the language used by the supreme court, it is perfectly clear that so long as the criminal case is pending in the county, the county attorney has authority to contract expenses necessarily incurred by him in procuring evidence and data to be used in a prosecution of persons in his county for violations of the criminal laws of the state.

You are advised that such expenses are proper charges against the county and that you have authority to, and should, allow the same when a claim therefor is presented which is subscribed and sworn to as just and wholly unpaid.

It is advisable, of course, whenever public policy and the proper enforcement of the laws will permit, to have such claims more fully itemized than the one mentioned above, but when there is good cause shown for not fully itemizing the claim and you are satisfied from statements made by the county attorney that the ends of justice might be defeated by making public, facts which he desires should be suppressed for the time being, in our opinion it is your duty to audit and allow the claim without requiring each item to be set out in detail.

Very truly yours,

ALBERT J. GALEN,

Attorney General.