

**County Attorney—Duty to Institute Removal Proceedings Against County Commissioners.**

The same rule applies in removal proceedings as in any other criminal proceeding, and the County Attorney should exercise the same discretion as to the institution of an action for the removal of County Commissioners, after an examination of the evidence, as he exercises in other cases.

N. A. Burkey, Esq.,  
County Attorney,  
Eroadus, Montana.

My dear Mr. Burkey:

Your letter in regard to request of various persons that you prosecute the members of the Board of County Commissioners of your county under Section 9006, Revised Codes of 1907, as amended by Chapter 25 of the Laws of 1917, has been received. You ask the view of this office as to whether it is the duty of the County At-

torney to file accusation under this section, and have called attention to an opinion by this office found in Volume 6 of the Opinions of the Attorney General, at page 400.

I am satisfied that, under the provisions of this section as stated in this opinion, any person who desires to make an accusation may do so, and when the same is made and filed, the court then has jurisdiction of the case and may require you to prosecute the same or may permit the action to be prosecuted by some private attorney.

That the action may be prosecuted by a private person has been clearly indicated by our Supreme Court in the following cases:

State ex rel. Rowe v. District Court, 44 Mont. 318;  
State ex rel. Payne v. District Court, 53 Mont. 350;  
State ex rel. Griggs v. Glass, 58 Mont. 476.

In the latter case our Supreme Court used the following language:

"Clearly, a proceeding for the removal of a public officer is not a mere controversy between the petitioner and the officer accused. \* \* \*

"In all its essentials it is a public proceeding ostensibly for the benefit of the public, to the end that we may have faithful public servants."

Under Section 3052, Revised Codes of 1907, the County Attorney is the public prosecutor, and it is his duty to prosecute for all public offenses. Apparently the same rule would apply in removal proceedings as in any other criminal proceeding and you should exercise the same discretion as to institution of an action, after examination of the evidence, as in other cases.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.