

Opinion No. 216.**County Attorney—Bastardy Proceeding—Appeal—Costs—Claims.**

HELD: It is the duty of the County Attorney to prosecute bastardy cases to a final determination and he has the power and authority to bind the county for all expenses necessary to the proper discharge of such duty.

December 26, 1935.

Board of County Commissioners
Carter County
Ekalaka, Montana

You have submitted the question whether the County Attorney may legally incur indebtedness against the county on an appeal of a bastardy proceeding, and whether the County Commissioners have the right to refuse to pay such claims.

It has been held by our Supreme Court, and repeatedly by this office, that the county must pay all expenses necessarily incurred by the County Attorney in the proper discharge of his duties. In the case of *In re Claims of Hyde*, 73 Mont. 363, 236 Pac. 248, where the court held that a County Attorney has power to bind the county for services of a stenographer if such services were necessary to the proper discharge of his duty, the court said:

"Under the authorities, and in reason, we are of the opinion that the County Attorney has the power and authority to bind the county for services of a stenographer if such services were necessary to the proper discharge of his duties as such officer, * * * ." (p. 368.)

"The County Attorney is presumed to have regularly performed his duty (Sec. 10606, Rev. Codes 1921),

and in the absence of any showing to the contrary we cannot presume that he has incurred unnecessary expense." (p. 370.)

The court quoted with approval *Pinal County v. Nichols*, 20 Ariz. 243, 179 Pac. 650: "It is not to be assumed that the county attorney will incur unnecessary expense, or that he will act recklessly or with indifference to the financial interests of the county. It is to be presumed that he, like all other public officers, will properly and conscientiously discharge his official duties, and, as the board * * * is charged with the duty of supervising all expenditures incurred by him, and rejecting payment of those which are illegal or unwarranted, it seems that there is but little danger that the county treasuries will be raided or looted."

Our statute provides that the proceedings may be commenced by the filing by any person of a complaint in writing to the District Court. (Section 12267, R. C. M. 1921.) "The County Attorney, on being notified of the facts, must prosecute the matter in behalf of the complainant." (Section 12271, *id.*) By express provision of the statute, it is made the duty of the County Attorney to prosecute the matter in the name of the State of Montana in behalf of the complainant. The duty to prosecute necessarily means to a final determination. If any errors were made by the trial court, they should be corrected by the Supreme Court in order that justice may be done. Naturally, the judgment of the County Attorney, who is trained in the law, rather than the judgment of the Board of County Commissioners, must be relied upon concerning all legal matters pertaining to the prosecution of the case. The statute fixes his duty, and it is not for the Board of County Commissioners to say when such duty ends.

It is, therefore, my opinion that it is the duty of the County Attorney not only to prosecute bastardy cases, but to prosecute them to a final determination if errors were made by the trial court, in order that justice may be done, and that he has the power and authority to bind the county for all expenses necessary to the proper discharge of such duty.