

Opinion No. 163.**County Attorneys—Duties—Grazing
Districts—Trespassing.**

Held: County attorney shall prosecute crime of trespass as set forth in paragraph 1 of Section 26, Chapter 208, Laws of 1939, but shall not act under paragraph 2 of said Section 26 of said act.

January 14, 1944.

Mr. Melvin N. Hoiness
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hoiness:

You have requested an opinion of this office asking if the county attorney, by virtue of his office, is the attorney for state grazing districts organized under Chapter 208, Laws of 1939.

Your question on this matter seems to be prompted by the language found in paragraphs 1 and 2 of Section 26 of said act.

It is to be noted that said paragraphs 1 and 2 of Section 26 are similar in effect to the general laws of the State of Montana relating to trespass, in that under the general laws of the state trespass may, in certain instances, be the foundation of both a criminal and civil action, and under this chapter offenders may be punished as a crime under paragraph 1 and a civil remedy is provided under paragraph 2 of said section.

It is my opinion that the county attorney is not, by virtue of his office, the attorney for the grazing district.

Any action brought by the county attorney under paragraph 1 of Section 26, Chapter 208, Laws of 1939, is in the nature of a criminal action, upon complaint being made for and on behalf of the state. Such an action would have no bearing on the matter of the district pursuing its civil remedy under paragraph 2 thereof. All actions under paragraph 1 of the said Section 26 which the county attorney deems proper should be brought by the county attorney for and on behalf of the state, and the state is to receive the fine as in other cases provided. All proceedings under paragraph 2 of the said Section 26 should be handled by the district's own attorney.

Sincerely yours,
R. V. BOTTOMLY
Attorney General