

VOLUME NO. 35**Opinion No. 68**

ATTORNEY GENERAL — Opinions, authority to issue, to whom issued, weight of; ATTORNEY GENERAL — Duties, opinions, to whom issued; ATTORNEY GENERAL — Powers, opinions, to whom issued; BOARDS AND COMMISSIONS — Opinions, attorney general, to whom issued, who authorized to issue; COUNTY ATTORNEYS — Attorney general opinions, to whom issued; OFFICES AND OFFICERS—State officers, attorney general opinions, to whom issued; OPINIONS — Attorney general, authority to issue, to whom issued, weight of. Article VI, section 4, Constitution of Montana, 1972; sections 46-104, 60-125F, 66-1017 and 84-401, R.C.M. 1947.

HELD: 1. Only the attorney general has specific authority to issue legal opinions to county attorneys or other agencies of state and county government.

2. Opinions issued by state officers or agencies which conflict with the attorney general's opinion on the same question must yield to the attorney general's opinion.

January 29, 1974

Mr. Rae Kalbfleisch, President
Montana County Attorney's Association
Toole County Courthouse
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

As president of the Montana County Attorney's Association you have requested my opinion on the following question:

Which agencies or departments of government in the state of Montana have the authority to issue legal opinions to county attorneys or to other officers or boards in the state of Montana?

You indicate that several county attorneys in this state have asked you, as association president, to obtain an opinion on the foregoing question because various state boards and agencies are currently issuing legal opinions to county attorneys and other county agencies.

It should be noted initially that the attorney general is **the chief legal officer of the state**. Section 4, Article VI of the Constitution of Montana, 1972, provides in pertinent part:

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

The attorney general of Montana has the authority and obligation to render legal opinions to certain agencies and officers. His general duties are specified in Title 82, chapter 4, Revised Codes of Montana, 1947.

Section 82-401, R.C.M. 1947, provides in pertinent part:

It is the duty of the attorney general:

(6) To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices.

The foregoing statutory provision was originally enacted as part of section 460, Political Code of 1895. Pursuant to this statute, the attorneys general of this state have prepared and issued published legal opinions since 1905.

The relative weight of an attorney general's opinion in terms of its legal application was considered in **State ex rel. Barr v. District Court**, 108 Mont. 433, 91 P.2d 399 (1939), wherein the court stated, at 108 Mont. 436:

The Attorney General of Montana rendered an opinion on October 31, 1933 ... to the effect that county commissioners have the power to employ a manager for a county employment office to cooperate with the National Re-Employment Service. ... While this executive construction of the law, acquiesced in by the legislative assembly, is not binding on this court, **it is entitled to respectful consideration and will be upheld if not palpably erroneous.** (Emphasis supplied)

See also: **State ex rel. Ebel v. Schye**, 130 Mont. 537, 305 P.2d 350 (1957).

In light of the preceding discussion, it is clear that Montana's attorney general has been given specific legislative authority to issue legal opinions to county attorneys as well as other state and county government agencies and officers and, further, that such authority has been recognized by the state supreme court. My research does not disclose the existence of any comparable authority in other state agencies or officials.

It is true that certain agencies of state government have been given authority by the legislative assembly to employ legal counsel to assist such agencies in the accomplishment of their statutory duties. See, for example, section 66-1017, R.C.M. 1947 (Montana State Board of Medical Examiners), section 46-104, R.C.M. 1947 (Board of Livestock), and section 60-125F (Board of Oil and Gas Conservation). However, no state agency, or any legal counsel employed by a state agency, has been given the authority to issue legal opinions similar to the broad authority vested in the state's attorney general. The reason for this is apparent when the function of a legal opinion is considered.

A legal opinion, by definition, serves to construe the law in terms of a particular legal question or problem. The purpose of the opinion is to assist an official or a governmental body in understanding its rights and obligations under the law, thus facilitating the effectuation of such rights and obligations. However, as the term itself indicates, an opinion simply constitutes the legal reasoning of its author. Thus, had the legislature given broad authority to state agencies to issue legal opinions, differing interpretations of the same question would constantly occur, resulting in further confusion to the requesting entity. The legislative assembly, therefore, gave only the attorney general the specific authority to issue legal opinions, and while it does not appear that any state agency or official is statutorily precluded from rendering legal opinions, through its legal counsel, such opinions must ultimately yield to an attorney general's opinion addressed to the same question.

THEREFORE, IT IS MY OPINION:

Only the attorney general of Montana has the specific authority to issue legal opinions to county attorneys or other agencies of state and county government, and conflicting opinions on the same subject issued by other state officers or agencies should be disregarded.

Very truly yours,

ROBERT L. WOODAHL
Attorney General