

**County Charge—Attorneys Claim Against County—The Prisoner, Defense Of—Section 1892 Penal Code Amended 1903, Page 46.**

The claim of an attorney appointed by the court to defend a pauper prisoner, must be presented to the County Commissioners as other claims against the County.

Helena, Montana, May 11, 1905.

John J. Kerr, Esq., County Attorney, Glasgow, Montana.

Dear Sir:—Your letter of May 8, submits to this office for consideration the question as to whether or not claims against a county, accruing under Section 1892, Penal Code, as amended by the laws of 1903, page 46, must be presented to the board of county commissioners as a claim against the county.

This act of the legislature of 1903 does not distinctly specify how such charges shall be paid but simply declares the liability of the county therefor. Unless otherwise provided by law the provisions of Section 4680, Political Code, requiring "accounts for county charges of every description" to be submitted to the county commissioners, must govern and such accounts must be presented as required by Sections 4286, et seq. Political Code.

The county treasurer cannot disburse county moneys except "on account of warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law." Cases where the treasurer may pay out money "as otherwise provided by law" are found in the statute.

Section 142, Code of Civil Procedure, authorizes the judge to incur certain expenses relative to furnishing suitable rooms for the holding of court, and the account therefor, when certified by the judge to be correct, "is a charge against the county treasury." Section 373, Code of Civil Procedure, provides that certain charges of the stenographer, when certified, "must be paid by the county treasurer, upon a certificate, like other county charges." (See also *Ex parte Ries*, 64 Cal. 233.)

Section 4645, Political Code, authorizes the clerk of the court to issue

certificates to jurors and these certificates must be honored and paid by the county treasurer.

In the act of the legislature now being construed, the account is made a charge against the county, not against the county treasury, as is the case in Sections 142 and 373, Code of Civil Procedure, nor is the treasurer directed to honor and pay the certificate, as is provided in the case mentioned in Section 4645, Political Code. The certificate of the judge, mentioned in the act, is evidence of the genuineness of the account and proof that the account is "just and true," but the treasurer is not authorized to pay out money on this certificate. The account should, therefore, be submitted, together with the judges certificate, to the county commissioners before the treasurer can pay out any money thereon. The judges certificate may be conclusive evidence, and the action of the board in ordering the warrant to issue may be only pro forma where the account is thus evidenced, yet this is the channel through which the claimant must secure the payment of his claim.

Respectfully submitted,

ALBERT J. GALEN,  
Attorney General.