

Attorneys Fees—Appointment by Court—Allowance Of.

Under the provisions of Section 1892 of the Penal Code, as amended by Chapter 23, Laws of 1903, page 47, the county in which a criminal action or proceeding arises, is liable to pay an attorney appointed by the court for his services, such sum as the judge certifies to be a reasonable compensation, not exceeding the maximum amount fixed by the law.

And in case more than one attorney has been appointed in the defense, the county must pay each attorney the amount certified to be a reasonable compensation, not exceeding the maximum amount prescribed in the law.

Helena, Montana, June 9, 1905.

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

Dear Sir: I am in receipt of your favor of the 5th inst., making request of this office for an opinion as to the provisions of Chapter 23, Laws of 1903, page 47.

FACTS PRESENTED.

The facts you present, as I understand them, are about as follows: The district court in a criminal case, in which the defendant was charged with murder in the first degree, appointed three attorneys to defend on the ground that the accused was unable to procure or employ counsel. All three attorneys acted in the defense, and each now present as a county obligation, a bill for the sum of \$100.00, certified by the judge to be a reasonable compensation.

QUESTION.

The question you present is whether the county is liable under said

law, to pay the three attorneys the amount of their respective claims in full.

THE LAW.

Under the express terms of the law, the county in which the particular criminal action or proceeding arises, is made liable to pay an attorney for his services, "such sum as the judge certifies to be a reasonable compensation therefore, not to exceed, in any capital case, the sum of \$100.00, in other cases of felony an amount not to exceed \$50.00, and in all other cases a sum not exceeding \$25.00." You will note that the only limitation of the law, as to the amount to be paid by the county to the attorney appointed to defend such a case, and the county in which the criminal action or proceeding arises, is expressly made liable for such amount as the judge certifies to be a reasonable compensation.

The judge may in such instances, be guilty of an abuse of discretion and lack of consideration for the taxpayer, but I am of opinion, under this law, that when the district judge has appointed counsel, and has thereafter certified to the amount of compensation to be paid such counsel, not in excess of the amount limited by law, that the Board of County Commissioners are without discretion in the matter, and must allow the claim as a proper charge against the county. The action of the judge in certifying is in nature a judicial action, and while the amount is limited by law, which shall be paid "an attorney," where there are more than one appointed by the judge, it is within the power and authority of the judge to allow and certify to each attorney as compensation, the full maximum prescribed in the law.

However, where counsel is appointed to defend in a criminal case, and accepts such appointment, I am of the opinion that he should be compelled to stay with the case in all of its phases, until final conclusion, for the one compensation not exceeding the maximum prescribed in the law, and that in cases of mistrial or new trial, attorneys should not be permitted to withdraw from the case for the purpose of being re-appointed and securing another fee otherwise or at all.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.