

County Attorney, Expenses Incurred in Criminal Cases.

Under Sections 4620 and 4681, Subdivision 2, of the Political Code, the County Attorney is authorized to incur necessary expenses in the prosecution of criminal cases, and may do so even though such expenses may be necessarily incurred without the State of Montana, and all such expenses so necessarily incurred

are proper charges against the county liable for the prosecution of such criminal cases.

February 4, 1905.

Hon. C. L. Murray, Chairman, Appropriations Committee, House of Representatives, Helena, Montana.

Dear Sir:—Your inquiry of February 2, 1905, regarding the claim of R. W. Berry, as County Attorney of Cascade County, for money expended by him in securing witnesses from the State of Washington to be used in the prosecution of the case of the State of Montana v. George Hliboki, to hand.

It appears from your communication that the appropriation asked for by Mr. Berry was for money necessarily expended by him as county attorney in the prosecution of this case. Section 4620, of the Political Code, authorized the county attorney to cause subpoenas to be issued and compel the attendance of witnesses on behalf of the State. Subdivision 2 of Section 4681, of the same Code, provides that all expenses necessarily incurred by the county attorney in criminal cases arising within his county are proper charges against the county.

This last section does not limit the county attorney to expenses necessarily incurred by him within the State, and if, in the proper prosecution of a criminal case, it is necessary to incur expenses in procuring witnesses outside of the State such expenses would therefore be a proper charge against the county. So it is for the board of county commissioners to determine whether the expenses were necessarily incurred by the county attorney in the prosecution of the case, and whatever part of the same they find were so incurred it is their duty to order a warrant drawn to him in payment of the same. On the other hand, if such expenses were not necessarily incurred neither the board of county commissioners of his county nor the legislature would be justified in paying the same.

I, therefore, advise you to refer this claim back to the board of county commissioners of Cascade county to take action in accordance with this opinion.

Very truly yours,

ALBERT J. GALEN,

Attorney General.