

**Court House, Improvements Thereon—Powers of District Judge.**

Under Section 142, Code of Civil Procedure, when in the discretion of the district judge suitable rooms for holding district court have not been provided by the county commissioners, the judge can direct the sheriff to provide the same and upon the bill for the expenses incurred being certified to as correct by the judge, it is a charge against the county treasurer and must be

paid by him upon presentation. It need not be audited by the board of county commissioners and the treasurer is fully protected in honoring any paying the certificate signed by the judge.

Helena, Montana, April 29, 1905.

A. J. Walrath, Esq., County Attorney, Bozeman, Montana.

Dear Sir:—Your letter of the 27th instant, asking for an opinion of this office, to hand. The question you submit is as follows: Where the district judge, under Section 142, Code of Civil Procedure, has directed the sheriff to provide suitable rooms for holding the district court by making repairs in the court room, and the expenses incurred by the sheriff in making such repairs has been certified to by the judge as correct, shall such certificate of the judge, when presented to the county treasurer, be paid out of the general fund without any action thereon having been taken by the board of county commissioners.

Subdivision 12 of Section 4230, Political Code, provides that the board of county commissioners must examine, settle and allow all accounts legally chargeable against the county; and Sections 4286, 87 and 88, of the same code, provide for the manner of presenting and allowing claims against the county; and subdivision 5 of Section 4350, of the same code, provides that the county treasurer shall "disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as therwise provided by law." You will notice that the language used in said Section 142, Code of Civil Procedure, is that the expenses incurred, when certified by the judge to be correct, are a charge against the county treasurer, which seems to distinguish the language of this chapter from that referred to in the above sections of the Political Code. Furthermore, said Section 142, provides that the judge may direct the sheriff to so fit up rooms for holding court where suitable rooms have not been provided by the board of county commissioners. Thus the judge or court only acts where the commissioners have neglected or refused so to act, and it would make a contradiction and conflict of authority in such section to hold that where the judge found it necessary, in his discretion, to so direct the sheriff, the commissioners having neglected or refused to act, and then have to submit the bill for the expenses incurred by the sheriff to the commissioners for their auditing and approval or rejection.

In construing Section 142 assistance can be found by referring to Section 373, Code of Civil Procedure, which provides that where the stenographer furnishes copy of testimony in criminal cases that he shall receive a certificate of the sum to which he is entitled, which is a county charge and must be paid by the county treasurer, upon a certificate, like other county charges. Here it appears that the certificate of the judge is sufficient authority for the treasurer to pay the money without the claim having to pass through the hands of the board of county commissioners.

In *ex parte Ries*, 64 Cal. 233, the supreme court construed a statute of California, relating to the fees of stenographers, which read in part

as follows: "In criminal cases, when the testimony has been taken down or subscribed upon the order of the court, the fees of the reporter shall be certified by the court, and paid out of the treasury of the county or city and county in which the case is tried upon the order of the court."

The court in that case held that the courts could fix the compensation of the stenographer in criminal cases, and it is the duty of the treasurer to pay the same upon the presentation of the order of the court. And Judge Thornton, in a separate and concurring opinion, in referring to Section 144, Code of Civil Procedure of California, which is identical with said Section 142 of our code, used the following language:

"See also the power given to the judges of the courts to create a charge on the county or city and county treasuries by Section 144 of the Code of Civil Procedure, where suitable rooms for holding courts and the chambers of the judges thereof are not provided in any city and county, or county, by the supervisors thereof. Here a charge is created against the treasuries of the political divisions mentioned in opposition to the action of the board of supervisors."

He said, further, in discussing the sections relating to stenographers fees:

"Would it not be peculiarly strange if a board of supervisors was to be required to supervise the action of a court under a form of government where the judicial, executive and legislative functions are distinctly separated by the organic law? We think this would be an anomaly in legislation which does not appear in our statutes. That a board of supervisors should review and reverse or modify the action of a court of general jurisdiction would be a thing unheard of in our system. If the board under the city charter can act on such claim it can disallow it, or it can allow in part. It may cut down the compensation so that no competent reporter can be found to undertake the work. Thus the administration of the law in criminal cases would be embarrassed and impeded. And unseemly and unfortunate conflict between two departments of the government may thus be brought about, which should by all means be avoided."

I am, therefore, of the opinion that the legislature intended, by said Section 142, to provide that where the county commissioners had neglected or failed in any manner to provide suitable rooms for the holding of the district court, or to provide rooms which in the opinion and discretion of the judge of such court were not suitable for holding the same, that the court or the judge thereof might direct the sheriff of the county to provide suitable rooms, etc. and that upon his certifying to the correctness of the bill for expenses incurred in so providing same, that it should be a charge against the county treasurer, and that the county treasurer must pay the same upon presentation, out of the general fund of the county. The bill, certified to by the judge as correct, is a sufficient warrant for the county treasurer to pay the money and fully protects him.

Very truly yours,

ALBERT J. GALEN,

Attorney General.