

Fees, Registration, Births on the Date. County Treasurer to Pay County Money Only on Warrants. Coroner Not to Hold Inquests on Indian Reservations Only in Certain Cases. Crimes by or Against Indians, Jurisdiction in Federal Court.

1. The county treasurer should pay county money out only upon the presentation to him of a warrant.

2. No duty rests upon the county coroner to hold inquests on an Indian reservation when he is informed that an Indian has died under such circumstances as to justify the belief that a crime has been committed.

Helena, Montana, Feb. 8, 1908.

Hon. John L. Slattery,
County Attorney,
Glasgow, Montana.

Dear Sir:—

I am in receipt of your letters of the 24th ult. submitting for the consideration of this office the following questions:

1. "From what funds should the fees provided for in Chap. 25, Session Laws 1907, be paid?"

2. "Should a coroner go upon an Indian reservation situated within his county and hold an inquest, where he is informed that an Indian has been killed on such reservation under such circumstances as to afford reasonable grounds to suspect that his death has been occasioned by criminal means?"

1. The question relative to the construction of Chapter 25, Laws 1907, was heretofore considered by this office in an opinion addressed to Hon. T. D. Tuttle, secretary of the state board of health, January 13, 1908,

wherein it was held that if the board of county commissioners has not designated the funds, such expense might be paid from either the general fund or from the contingent fund, but that under the provisions of Section 4257 of the Political Code the contingent fund is probably the proper fund from which to make such payment. But the question as to whether the treasurer should pay the amounts certified by the State Registrar, without a warrant having been first drawn to the claimant, was not considered. This question, relating wholly to the method of procedure, now becomes important. Section 13 of said Chapter 25 provides that whoever files the certificate therein "shall be entitled to receive the sum of fifteen (15) cents, to be paid by the treasurer of the county upon certification by the State Registrar." Further on in the section it is provided that "the State Registrar shall annually certify to the treasurers of the several counties the number of births registered, with the name of the person registering them and the amounts due each at the date fixed herein." This chapter does not specifically state that the county treasurer shall pay the amount named in the certificate to the claimant without the production of a warrant therefor, but that would be the only inference from the wording of the law if there were no other provisions of the law relating to the method of procedure to be followed in drawing money from the county treasurer. Section 4686 of the Political Code provides "Accounts for county charges of every description must be presented to the Board of County Commissioners to be audited" etc. Subdivision 5, Sec. 4350, Pol. Code, also provides "That the county treasurer must dispense the moneys only on county warrants issued by the county clerk * * * or as otherwise provided by law. And Subdivision 12, Section 4230, Pol. Code, makes it the duty of the county board "to examine, settle and allow all accounts legally chargeable against the county, except salaries, etc." The warrants drawn by order of the board must be paid in the order of their presentation to the treasurer.

Secs. 4290, 4250, 4353, Pol. Code; and Session Laws of 1899, page 99.

Under the provisions of this latter section the county treasurer could not legally pay out any money from any funds, against which there were outstanding warrants, nor is there any way provided in this 1907 law for registering the claims due to the several claimants as shown by the certificate from the State Registrar.

While it may be within the power of the legislature to provide for the dispensing of county moneys without any auditing on the part of the county authorities, still that method has never been pursued in this state, but the method followed has been to require the claimant to present his claim for allowance and secure a warrant for the amount due. And in view of this positive provision of the statute above referred to I do not believe it was the intent of the legislature by this chapter 25 to inaugurate a new system and to amend by implication all these various statutory provisions, but that this certificate from the State Registrar was simply evidence of the genuineness of claims made against

the county under this chapter 25, or at least it would afford the county auditing board an opportunity of determining the genuineness of such claims, although the action of the board in drawing a warrant would in most cases be merely perfunctory, as is the case in the payment of a judgment against the county (4199 Pol. Code.) We have not been able to find any cases directly in point, and the cases frequently referred to, upon investigation, we find, are not authority upon this particular question.

Morris, Auditor vs. State ex rel Brown, Clerk, 96 Ind. 597, involved the question as to whether the county auditor should draw a warrant in favor of the county clerk, without the claims having first been passed upon by the board of supervisors.

Auditor General, vs. Board of Supervisors of Bay County, 106 Mich. 662, involved the claim of the state against the county for taxes collected, and it was held that it was not necessary that such claims of the State should be first audited by the county authorities, and the county in that case disputed the entire claim, while the question we are here considering does not involve a dispute of the claim, but only the method of procedure by which the money may be illegally drawn from the treasurer.

In *Paff vs. State 94 Ind. 529*, it was held "that where there is no specific provision for the auditing of claims they must be presented to and allowed by the commissioners."

We therefore advise that the safer course to be pursued by the county treasurer with reference to the demands made for fees provided for in Section 13, Chap. 25, Laws 1907, is to require the claimants to present to him county warrants for payment.

2. The only purpose of holding an inquest is to determine whether or not a crime has been committed.

Sec. 2790 Pol. Code.

Morgan vs. San Diego County, 86 Pac. 720.

The United States reserves to itself the authority to punish for crimes committed upon the reservation against Indians and by Indians.

Draper vs. U. S. 164 U. S. 247.

U. S. vs. McBratney, 104 U. S. 624.

It therefore follows that it is not the duty of the county coroner to investigate crimes committed upon the Indian reservation by Indians or against Indians.

Very truly yours,

ALBERT J. GALEN,

Attorney General.