

**Counsel at Trial, Right of Defendant To. State, Obligation of to Furnish Counsel. Preliminary Hearing, Counsel Secured by Defendant.**

The constitution and statute provide that a defendant has a right to be represented by counsel at every stage of any criminal proceeding. In preliminary hearings defendants must procure counsel. If defendant appears for arraignment in the district court without counsel, and without means to employ counsel, the court must, if the defendant so desires, appoint counsel.

August 22, 1910.

Hon. O. D. Gray,  
County Attorney,  
Chouteau, Montana.

Dear Sir:—

I am in receipt of your letter of August 16, 1910, asking for my construction of Section 9077, revised codes, providing to the defendant the right of counsel in every stage of the proceeding against him.

I do not understand that this provision entitles defendant to counsel at the expense of the state or county. It is an enactment in pursuance of the constitutional provision contained in Section 16, Article III., of the state constitution, giving the accused in all prosecutions the right to appear and defend in person and by counsel. This is a right of which the defendant cannot be deprived; provided, he can himself secure counsel. (See *People vs. Naphaly*, 105 Cal. 643, 39 Pac. 29.)

Section 9188, revised codes, confers the additional right upon the defendant, when he appears for arraignment without counsel, to have counsel assigned by the court to defend.

This is the only section, so far as I know, which makes it the duty of the state to provide defendant with counsel. This last provision appears in chapter I., Title VII., Part II., which is devoted to the general subject, pleadings and proceedings after information or indictment and before the commencement of the trial.

I note your request for a copy of my opinion relative to the chairman of the board of county commissioners signing county warrants. I have not written any opinion on this subject, but gave a verbal opinion to the state examiner, approving a regulation made by him with regard to the signing of county warrants.

Yours very truly,

ALBERT J. GALEN,  
Attorney General