

Indictments, Sufficiency Of.

An indictment should be in the same form and carry the same recitations as an information, except that the endorsements thereon must be made by the foreman of the grand jury and the county attorney and no verification need be attached.

February 28, 1911.

Hon. Edw. C. Mulroney,
County Attorney,
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of February 16th, 1911, together with two copies of indictments; one drawn under section 368, and the other under Section 369, Revised Codes, concerning which you ask my opinion as to the form thereof.

I am of the opinion that the indictment in each case is in proper form and cannot be successfully attacked by demurrer or otherwise, for insufficiency. This is to the form of indictment so far as I have it, as you sent me the copies. I presume that you neglected to make the endorsements thereon required by Sections 9140, 9141 and 9142, which of course may be made upon the cover of the copy of the indictment file, but I suggest that it would be well to deliver a true copy including these endorsements to the defendants or their attorneys at the time of arraignment. It seems that aside from these endorsements required upon the indictment and the absence of a verification of the county attorney, is the only difference between the indictment and an information in this state. If both of these indictments have been returned by the grand jury, it seems you are required to proceed upon them both, unless you should determine that the outcome of the case first tried is sufficient to justify you in asking the court for a dismissal

of the second indictment. I do not see that there is any reason why one should be tried before the other as both indictments in my opinion are sound, the one under Section 368 and the one under Section 369.

You say that you have considered the matter of proceeding under Section 2951 and decide not to draw indictment under that section. It seems to me that the facts which you have alleged in the indictments which you have forwarded to me are clearly triable under the sections under which you have drawn them, and I see no reason, for invoking the aid of Section 2951.

As requested in your letter I am withholding this opinion from publication, and will not release it from this office.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

P. S.—I am returning herewith copies of indictments which you forwarded to me.

ALBERT J. GALEN.