

Subpoena, Copy of. Copy of Subpoena, Charge for.

Before a charge can be made for making a copy of a subpoena, there must be actual service of the subpoena.

October 23rd, 1913.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of letter addressed to you by Mr. J. C. Orrick, sheriff at Billings, Montana, submitting the question: "Should the sheriff charge for making copies of subpoenas when for any reason the subpoena has not been served?"

Sec. 7976 of the Revised Codes, providing the manner of service, requires the delivery of "a copy or ticket containing its substance to the witness," and Sec. 3176 gives authority for charging a fee for making copy "when demanded or required by law." This same section also is authority for charging a fee "for serving a subpoena." Hence the copy is necessary in the service of the subpoena, but unless the subpoena is served, the copy is not "required by law." This same question has heretofore been before this office, and was discussed at some length in an opinion given to Mr. J. P. Regan, deputy county attorney, Great Falls, on August 30th, 1905, and reported in Opinions of Attorney General, 1905-06, at page 179, and also in a later opinion addressed to Hon. S. P. Wilson, county attorney, at Deer Lodge, Montana, on June 3rd, 1911, and reported in Opinions of Attorney General for 1910-12, at page 198. Where actual expense has been incurred in attempting to serve a subpoena, the officer is entitled to recover such expense, but I do not think that the mere fact of making the copies is a legal charge, unless the copies so made are actually used in the service; that is, there must be an actual service of the subpoena before a charge can be made for making the copies, for such copies are only "required by the law" when service is made.

I return herewith letter of Mr. Orrick.

Yours very truly,

D. M. KELLY,
Attorney General.