

**County Attorney, Expenses Allowable. Agent to County Attorney. Salary of Agent to County Attorney.**

An agent, not an attorney or deputy, was appointed to the office of the county attorney of Silver Bow County at a salary of \$150.00 a month, and after performing service under the appointment filed his claim therefor with the county auditor. Held that the appointment was without the authority of law, and the claim should be disapproved; that if services were necessarily incurred by county attorney in connection with criminal business, arising in the county, the same might be paid for as expenses incidental to the office of the county attorney.

January 6th, 1914.

Hon. James Kane,  
County Auditor, Silver Bow County,  
Butte, Montana.

Dear Sir:

I have your letter of the 29th ultimo, with claim of Jerre M. Harrington against Silver Bow County attached. I gather from your letter that on the 12th day of December, 1913, Mr. Harrington was appointed special agent in the office of the county attorney of Silver Bow County. The authority for making this appointment is not disclosed by your letter. The claim of Mr. Harrington is in the sum of \$150 for services rendered as special agent in the office of the county attorney for the month of December, 1913. You request an opinion as to whether or not the claim should be allowed in the form in which it was presented to your office.

I understand that Mr. Harrington is not an attorney, and that the claim is not for services rendered as a deputy county attorney, but as an agent in the county attorney's office. You are advised that there is no authority of law for the appointment of an agent to the county attorney, and it has been repeatedly held in this state that claims against a county must have the direct sanction of law to entitle the claimant to payment thereof.

Sears v. Gallatin Co., 20 Mont. 462.

40 L. R. A. 405.

Wade v. Lewis and Clark Co., 24 Mont. 335.

If Mr. Harrington be entitled to any pay at all for services which he has rendered as agent for the county attorney, the authority must be found under the provisions of Sec. 3199, Revised Codes of Montana, 1907. The second paragraph of this section makes all expenses necessarily incurred by the county attorney in criminal cases arising within the county, a county charge. Hence, if Mr. Harrington's services were necessarily rendered in connection with criminal cases arising in Silver Bow County it would be as a necessary expense incident to the county attorney's office, and should be allowed to the county attorney as such.

See Independent Publishing Co. v. Lewis and Clark Co., 30 Mont., page 83.

The claim of Mr. Harrington is returned herewith.

Very truly yours,

D. M. KELLY,  
Attorney General.