

County Attorneys—Powers Of—Detectives, Employment Of—Claim Against County For.

County attorneys are authorized to employ detectives to obtain evidence in criminal prosecutions and claims for their services are proper charges against the county.

Oct. 14, 1919.

Hon. C. R. Stranahan,
County Attorney,
Havre, Montana.
Dear Sir:

In response to your verbal request for an opinion as to whether or not you are authorized to contract with experts and special investigators or detectives to pay them for their services in attending as witnesses at the trial for a compensation in excess of the amount which the statute allows for attendance of witnesses at the trial of a criminal case.

It must be conceded that the duty and responsibility rest upon the County Attorney to conduct all prosecutions for crimes triable in his county. (Section 3052, Revised Codes.) It is clear that it is within the power of the County Attorney to do that which is essential to the prosecution of offenders and that that is a matter necessarily, to a great extent, dependent upon his judgment. This is so as to all county offices in respect to the subject to which their duties relate. They take as incidental to them such powers as may be deemed necessary to the proper performance of their official duties.

A great deal of latitude is given a County Attorney in the matter of incurring expenses incident to his official acts. He is the prosecuting officer of his county, charged with the prosecution of offenders against the law. Of necessity he must be vested with a large measure of discretion in the management and preparation of cases that he is expected to prosecute and as to what expenses he shall incur in conducting prosecutions. By Section 3199, Subdivision 2, Revised Codes, "all expenses necessarily incurred by the County Attorney in criminal cases arising in his county" are made county charges. I think the County Attorney does not exceed his authority in engaging the services of experts, investigators or special detectives in the investigation necessary to enable him to determine if a crime had been committed in the county and that such experts, etc., are entitled to reasonable recompense for services rendered and disbursements incurred while so engaged by the County Attorney, including the time in which they were used as witnesses, although such recompense exceeds the usual witness fees prescribed by Section 3182, Revised Codes, when authorized and approved by the County Attorney. See *Victors vs.*

Kelsey, 161 Pac. 1006 (Calif.), which involved the question of the authority of the district attorney to incur an expense in securing the testimony of an expert in a criminal case.

It is therefore my opinion that the general law fixing the fees of witnesses is not a limitation upon the power given the County Attorney by the statutes above referred to and the County Attorney is therefore authorized to incur an expense for such witnesses, although in excess of the usual witness fees prescribed in said Section 3182, and a claim for such services is a valid claim against the county.

Respectfully,

S. C. FORD,

Attorney General.