

**Intoxicating Liquors—Search and Seizure—Inquisition—
Sunday—Search Warrant, Issued On—Arrest Without War-
rant.**

Not proper for County Attorney to conduct inquisition on Sunday.

A search warrant may be issued on Sunday.

When an officer arrests without a warrant, he should act with reasonable diligence in searching the same.

March 31st, 1919.

Mr. Leonard Goodwin,
County Attorney,
Hamilton, Montana.

Dear Sir:

I acknowledge receipt of your letter of March 5th, submitting four questions relating to searches and seizures under the Prohibition Law, Chapter 143 of the 1919 Session Laws. Permit me to suggest that the work of this office will be greatly facilitated if county attorneys desiring opinions will comply with the request which I have repeatedly

made that they submit with their question the conclusions they have reached, together with such authority as they may be able to present in support thereof.

Answering your questions in the order in which they are presented:

a. No, I would not advise the holding on Sunday of the inquisition authorized by Section 12 of Chapter 143 supra. No reason was made to appear why such inquisition cannot as conveniently be held on an ordinary week day as on Sunday. Sec. 6296 provides that no judicial business shall be transacted on Sunday except (quoting the statute only in part) "for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature." Section 8923 defines who are magistrates and does not include county attorneys. Hence, I conclude it to be very questionable whether a county attorney can legally conduct the above inquisition on Sunday.

b. Without reference to the assumption of an inquisition being held on Sunday, I am of the opinion that a search warrant can be legally issued and served on that day. These search and seizure laws, while not strictly criminal in their nature, are nevertheless at least quasi criminal and being such, I am of the opinion that under that portion of Section 6296 above quoted a magistrate would be authorized to exercise all his powers to issue a search warrant on Sunday, and that the sheriff would be similarly authorized to serve it on that day.

c. Whenever a sheriff arrests a man without a warrant he must proceed as diligently as possible to procure a warrant to retroactively testify his actions, Wollen & Thornton on the law of intoxicating liquors, Vol. 2, Sec. 643, states practically the ruling above announced and says: "It has been held that a warrant to be served within a reasonable time must be taken out at least within twenty-four hours after such a seizure or arrest has been made in no sufficient reason to give for a further delay." Citing *Westeron vs. Carr*, 71 Me. 356, what is a reasonable time would of course depend upon the circumstances in each case, but the officers should act promptly and secure his warrant as soon as he can find an officer authorized to issue one.

d. This question has been answered by what has been said above.

Regarding the other matters referred to in your letter, I hand you herewith a copy of an Opinion rendered by this office to Hon. John A. Slattery, under date of January 13, reported at page 18 of Vol. 5, Opinions of Attorney General: ●

"Hon. John A. Slattery,
County Attorney,
Glendive, Montana.

Dear Sir:

I am in receipt of your letter of the 7th inst., submitting the question:

"Whether or not the board of county commissioners has any authority in law to pay the expenses of the county clerk, county assessor, and one member of the board of county commissioners to the annual meeting of the board of county commissioners?"

I presume by this is meant the general meeting that is held by the various county officers at some point in the state and at some time to be mutually agreed upon. I have not been able to find any law naming or designating any such meeting, and, therefore, conclude that the same is wholly voluntary with the county officers: that there is no law compelling their attendance nor prescribing the duties to be performed at such meeting. There is, therefore, no law providing for the payment of expenses.

However, the provisions of Sec. 2894 of the Revised Codes, particularly of subdivision 22 thereof, and of subdivision 8, Sec. 3199, are quite general in their terms, and if the actual interests of the county demand such attendance I presume there would be no objection raised to the payment of the expenses, and in the absence of any statutory direction or authority, no general or specific rule can be given.

The case of *Wade v. L. & C. Co.*, 24 Mont. 338, deals in a general way with what is a proper charge against a county.

Very truly yours,

D. M. KELLY,
Attorney General."

Your letter does not state what county officers you have reference to nor what specific state conventions they contemplate attending. Possibly a more definite opinion might be given if these were given.

Respectfully,

S. C. FORD,

Attorney General.