

**Counties—County Attorney—County Commissioners—
Stenographer.**

A County Attorney may not employ a stenographer without the authorization of the Board of County Commissioners.

Expenses necessarily incurred by the County Attorney for stenographic work are proper charges against the county.

Whether the bills should be allowed in this case calls for the exercise of sound discretion on the part of the County Commissioners in determining whether or not the expense was necessarily incurred by the County Attorney.

James L. Hillier, Esq.,
Chairman Board of County Commissioners,
Superior, Montana.

My dear Mr. Hillier:

You have submitted to this office certain claims of Mrs. B. M. Hyde for June and July services rendered as stenographer for the County Attorney of your county, together with your request for an opinion as to whether these claims are legal charges.

The question of the authority of County Attorneys to employ stenographers, either generally or for the performance of special work, has repeatedly been before this office and is fully discussed in the following opinions to which you are respectfully referred for a more detailed explanation of the reasons for the conclusions reached:

Former Attorney General Galen, in an opinion reported in Vol. 3, Opinions of Attorney General, p. 64, held that:

“Where it is necessary for a County Attorney to employ a stenographer for the purpose of preparing pleadings, instructions, etc., in cases wherein the state or county is a party, and” in writing letters concerning the business of the county, that the expense thereof is a proper charge against the county.”

This opinion is based upon the authority of Subdivisions 2 and 8 of Section 3199, Revised Codes of 1907 (Sec. 4952, R. C. M. 1921). These statutes provide that all expenses necessarily incurred by the County Attorney in criminal cases arising within the county, and the contingent expenses necessarily incurred for the use and benefit of the county are proper county charges. The above opinion was cited and followed by Attorney General Kelly in an opinion in Vol. 5, Opinions of Attorney General, p. 275, and the same conclusion reached.

Both of the foregoing opinions were further cited in an opinion by the present incumbent of this office, reported in Vol. 9, Opinions of Attorney General, p. 277, in which the same conclusion is reached

that a County Attorney may not employ a stenographer without authority from the Board of County Commissioners, but that the expense of stenographic work necessarily incurred by the County Attorney is a proper charge against the county, to be allowed by the County Commissioners.

As to whether or not the bills of Mrs. B. M. Hyde, which you have submitted to this office, are for stenographic work necessarily incurred by the County Attorney of your county is a question of fact to be determined the same as any other fact. In my judgment, the County Attorney has no authority, without the consent of the Board of County Commissioners, to employ a stenographer for the sole purpose of keeping his office open for the transaction of county business during the County Attorney's absence. An examination of the enclosed bills, however, will indicate that, in most instances where a charge has been made for "keeping office open" it is accompanied by language indicating that work was performed in the County Attorney's office in addition to keeping the office open.

Before allowing or disallowing these bills, it is my opinion that your Board should ascertain the facts as to whether or not necessary services were performed by the claimant in addition to keeping the office open. If the former was done, claimant is entitled to pay for her services. If services were not performed, the bills should be disallowed for so much thereof as relate only to keeping the office open. The other items for which the bills are presented appear, so far as I am able to ascertain, to be proper, although the June bill might properly be required to be further itemized so as to show in detail the particular services rendered.

The entire matter involves a question for the exercise of sound discretion on your part, it being your duty to allow reasonable charges for stenographic work necessarily incurred by the County Attorney and to disallow such bills as in your judgment are otherwise incurred.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.