

**Courts — Court Reporter — Compensation — Trials — Stenographers.**

Where a regularly appointed court reporter takes the testimony in the trial of a case at a place other than in the district for which he is the official reporter and where he was not appointed as temporary court reporter, such reporter is not entitled to charge the county in which the trial was held any compensation for such services.

D. R. Young, Esq.,  
County Attorney,  
Baker, Montana.

My dear Mr. Young:

You have submitted to this office the question whether the Court Reporter of the Sixteenth Judicial District is entitled to receive \$53.33 from Fergus county for services as Court Reporter in the case of *State v. Carmichael*. This case was originally commenced in Garfield county and subsequently transferred to Fergus county. It appears that the Court Reporter in the Sixteenth Judicial District is regularly employed at a salary of \$2,400.00 per year, and that the case in question was retried in the Tenth Judicial District.

In the case of *State ex rel. Cascade County v. Lewis and Clark County*, 34 Mont. 351, the question presented to the Supreme Court was whether in a case where the place of trial had been changed from Lewis and Clark county to Cascade county and where the County Attorney of Cascade county was disqualified and the County Commissioners of that county employed a special prosecutor, paying him \$600.00, this was a proper item of cost to be charged against Lewis and Clark county. Mr. Justice Holloway, speaking for the Court, said:

“Assuming, but not deciding, for the question is not before us, that the word ‘costs’ used in Sections 4682 and 4683, Political Code, has a broader meaning than the same word when used elsewhere in the Codes, still the costs which Lewis and Clark county is required to pay to Cascade county are such only as Lewis and Clark county would have been called upon to pay on account of the trial of this particular case, had it been tried at home; in other words, such costs as necessarily attach to a like case with respect to which the County Attorney performs the duties of his office. The board of the prisoner, the Sheriff’s mileage in taking him to the place of trial, the mileage of the Sheriff in getting jurors and witnesses for this particular trial, the mileage and per diem of such jurors and witnesses, the per diem of the bailiffs, and possibly some other like items, would be all that could possibly be said to arise out of this particular trial under the most liberal views which can be taken of the meaning of the word ‘costs’ used in the sections above.”

In the case of Kent County v. Mecosta County, 126 Mich. 299, 85 N. W. 739, it was held that the recovery of a stenographer's fee could not be had where the stenographer is paid an annual salary.

Under the case of State ex rel. Cascade County v. Lewis and Clark County, it is apparent that the services as stenographer, had he acted in your own county, would not be a proper charge against the county in which the case originated. The court stenographer of the Sixteenth Judicial District was under no obligation to serve as court stenographer in Fergus county, that being outside of his district, and he was drawing salary as a court stenographer in the Sixteenth Judicial District for the time he served in Fergus county.

It does not appear that the regular stenographers were disqualified in this case or that the Court appointed the stenographer of the Sixteenth Judicial District by reason of either of them being unable to act under the provisions of Section 8934, Revised Codes of 1921. The court stenographer is a county officer and, in this case, the office was filled by a person capable of performing the duties of his office in the particular case. There was no vacancy in the office and no apparent legal reason for appointing a temporary officer.

It is, therefore, my opinion that the stenographer is not entitled to compensation from Fergus county.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.