

**Public Accountants—Counties — County Commissioners  
—County Attorney—Expenses — Employment — Claims—  
Criminal Cases.**

The County Attorney has authority to employ expert accountants to aid him in the preparation and prosecution of criminal cases arising in his county, and the reasonable expense of such work, when necessarily incurred, is a proper charge against the county.

Board of County Commissioners,  
Butte, Montana.

Gentlemen:

You request my opinion whether a County Attorney has the authority to employ public accountants in the course of the preparation and prosecution of criminal cases in his county, and also whether the claim of the accountants so employed is a legal claim against Silver Bow county.

Section 4952, R. C. M. 1921, enumerates what are county charges; Subdivision 2 thereof mentions the following:

“One-half of the salary of the County Attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.”

It appears from the claim filed that the services rendered were preliminary investigations, examinations and searches of the records of a bank which, although not so stated, I understand had closed, and the officers of which were accused of violating the laws of Montana relating to banking, said bank being situated in Silver Bow county; also consultations with the County Attorney relating thereto; an audit of the records of said bank, general assistance rendered the County Attorney during the trial of the case, and giving testimony in the case. It is apparent that the services rendered were those of an expert, and under similar and identical statutes as that quoted above it has been held that the County Attorney has authority to en-

gage the services of persons of this kind to enable him to prosecute criminal actions arising in his county, and that the expense thereof, when necessarily incurred, is a proper charge against the county.

Pinal County vs. Nicholas, 179 Pac. 650 (Ariz.)

Kytka vs. Weber County, 160 Pac. 111 (Utah.)

People ex rel. Gardenier vs. Board of Supervisors of Columbia County, 31 N. E. 322 (N. Y.)

The authority of the County Attorney in this respect is subject to certain limitations:

1. The expense must have been in connection with a criminal case arising within the county. The claim does not show upon its face that the criminal case arose within the county of Silver Bow. Neither does it show that the services rendered were in pursuance of an agreement with the County Attorney of that county. It should be amended to show these facts upon its face, if they are the facts.

2. The expense incurred must be reasonable. What is, or is not, a reasonable charge for the services rendered is a question of fact to be determined in the first instance by the County Attorney, subject to review by the Auditor and Board of County Commissioners (Pinal County vs. Nicholas, supra). The question of the reasonableness of the charges is one of fact, not of law, to be determined by the Auditor and Board after investigation relating thereto. In this connection I observe that the claim has been approved by the Auditor, but this is not conclusive upon the Board. The Board has no authority to allow a claim that has been disapproved by the Auditor, but may disallow one even though it has been approved by him (State ex rel. Dolin vs. Major, 58 Mont. 140). The claim does not state with whom the agreement was made that the claimant was to receive \$50.00 per day. It should show on its face that the agreement was made with the County Attorney of Silver Bow county, if such is the fact.

3. The expense must have been necessarily incurred. Whether it was or was not is a question of fact to be determined in the first instance by the County Attorney, subject to review by the County Auditor and Board of County Commissioners. (Pinal County vs. Nicholas, supra; Yolo Co. vs. Joyce et al., 156 Cal. 429, 105 Pac. 125.) In this connection it has been said by one Court:

“What are ‘necessary expenses’ must inevitably depend upon circumstances, and it is a flexible term. The District Attorney is invested with much latitude and discretion in determining what expenses are necessary. In the performance of the responsibility with which he is charged in the prosecutions of crimes within his county, he is required to exercise his judgment as to the wisdom of employing experts and as to other expenses to be incurred in any given case.” People ex rel. Koetteritz vs. Supervisors, 132 N. Y. S. 808.

The County Attorney is charged with the duty of prosecuting violations of law within his county and he is responsible for the conduct of the prosecution. It is his duty to determine whether the law has been violated in a given case, and to make such necessary investigations to make such determination, and when such investigations involve examinations and explanations of records requiring the assistance of experts possessed of the requisite technical knowledge relating thereto he is permitted to avail himself of such assistance and the expense thereof is a proper charge against the county, provided the expense is necessary and reasonable. In this claim it appears that the persons making the investigations, audits and examinations of the records also testified in the case. While I do not know the nature of their testimony, I infer that it was expert in character based upon their knowledge of the records from examinations and investigations. It is quite uniformly held that a County Attorney may employ an expert to make examinations and investigations preparatory to his being called as a witness and that the reasonable expenses thereof are a proper charge against the county. The County Attorney is the judge as to whom he will call as a witness, and the character of the testimony he will produce at the trial. There are many things to be considered in determining why it would be better to use one witness in preference to another, and this is left to the discretion of the prosecuting officer. The fact that the State Examiner might have testified to the same things as did the witness who was used did not make it incumbent upon the County Attorney to use the Examiner to the exclusion of the witness used. He might have used them both to testify to the same things, if he thought it necessary.

If any of the services rendered by the claimant were merely for the information of the County Attorney and can be distinguished from his investigations and examinations preparatory to being called as an expert witness, and the information so acquired by the County Attorney could just as well have been obtained from the State Examiner, it is my opinion that to this extent the expense would not be necessary. However, this cannot be determined from the information contained in the claim as filed, and it is a question of fact to be determined by the Board, after investigation of all the facts and circumstances.

Very truly yours,

L. A. FOOT,  
Attorney General.