

County Commissioners — County Attorney — Claims — Chemist.

The County Commissioners must allow a claim for expenses incurred by a chemist in analyzing intoxicating liquor when he is employed by the County Attorney to do so.

Raymond Shelden, Esq.,
County Attorney,
Ekalaka, Montana.

My dear Mr. Shelden:

You have submitted to this office for my opinion the question whether the Board of County Commissioners has the lawful right to reject a bill of a chemist for analysis made to determine the alcoholic content of intoxicating liquor, where the chemist and the County Attorney have made an express agreement that the services are worth the sum of \$50.00 and that the County Attorney recommended to the Board of County Commissioners that such sum of \$50.00 be paid.

From the statement of facts contained in your letter it appears that three cases were pending in your county for violation of the prohibition laws, and that in order to show that the liquor was in fact intoxicating it was necessary to prove the alcoholic content of the same; for this purpose you entered into an agreement with a doctor to make a chemical analysis of the liquor in each case, and to study up on the subject so as to enable him to testify as an expert on the trial of such cases, and that you agreed with him regarding the amount he should be paid for such services.

Section 4952, Revised Codes, 1921, includes in the enumeration of county charges, the following:

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

Construing such provision the Attorney General held in Vol. 8, Op. Atty. Gen., p. 173, and Vol. 8, Op. Atty. Gen., p. 270, that it authorized and empowered a County Attorney to employ detectives for the purpose of obtaining evidence upon which to prosecute persons violating the liquor laws, and to agree with such detectives regarding

their expenses and compensation and that the same thereupon became a county charge which should be allowed and paid by order of the Board.

Those opinions control the question you have submitted. There can be no difference between the power of a County Attorney to employ detectives to procure evidence in a criminal case and the power of a County Attorney to employ an expert to furnish certain evidence in such a case.

The case of *Victors v. Kelsey* (Cal.), 161 Pac. 1006, is almost directly in point, the California statutes being similar to ours, and the facts in that case being similar to those stated in your letter, and it was there held that the expenses were properly incurred by the County Attorney under the power given him by the statute, and the amount agreed to be paid therefor was a county charge, and that it was the duty of the Board to allow and order the same paid.

It is, therefore, my opinion that this expense was properly incurred by you, under Subdivision 2 of Section 4952, and by virtue thereof became a county charge, and that it was the duty of the Board of County Commissioners to allow and order the same paid. I do not mean to be understood as holding that in every case the Board of County Commissioners is absolutely bound by the agreement of the County Attorney, because there may be cases in which the compensation agreed to be paid by the County Attorney is clearly and unquestionably exorbitant, but it is my opinion that, except in those rare instances where the amount agreed upon is so clearly and unquestionably exorbitant as to shock the conscience, the Board of County Commissioners must allow and order paid the amount agreed upon by the County Attorney. In this case, for studying up on the subject so as to become qualified as an expert and for making an analysis of liquor in three separate cases, the fee agreed upon does not appear to be exorbitant or unreasonable.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.