

**Fees—Witnesses—Contempt Proceedings—Counties.**

Witness fees in contempt proceedings are properly chargeable against the county.

Dean King, Esq.,  
County Attorney,  
Kalispell, Montana.

My dear Mr. King:

You have requested my opinion as to whether witness fees in a contempt proceeding, brought for the purpose of having a defendant in a divorce proceeding adjudged guilty of contempt for failure to pay alimony, are a proper charge against the county. Upon the hearing the party charged with contempt was found guilty by the court and sentenced to five days in jail.

You state as your opinion that the county is liable for witness fees at this hearing, calling attention to the opinion found in Vol. 2, Opinions of Attorney General, p. 294, where the matter of fees in contempt proceedings is very fully discussed and a distinction made between a civil contempt and a criminal contempt. In the first instance, the fees are chargeable as costs to the party, and in the second case they are chargeable to the state.

I agree with you in your conclusion that in the instant case the contempt proceeding was of a criminal nature and that, therefore, the costs are properly chargeable to the county, Section 4952 providing that witness fees in a criminal case are a charge against the county, and Sections 4903 and 4904 providing that the county shall pay witnesses' expenses in civil actions brought on behalf of the state or county.

In the case of *Dunlavey v. Doggett*, 38 Mont. 204, the court held that contempt proceedings under the Code of Civil Procedure are *sui generis* and have most, if not all, of the characteristics of a criminal case, and few, if any, of a civil case; that the costs therein must be paid from any fine imposed and that any fine imposed must go to the state. If costs are required to be paid from the fine when the fine goes to the state, it would seem to follow that the state or county must pay the costs and must be liable for witness fees.

It is, therefore, my opinion that the county is liable for the fees of a witness in a proceeding of this kind.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.