

**Stenographer—County Attorney—Court Reporter—Fees—
Compensation—Justice's Courts.**

The district court reporter is entitled to extra compensation for reporting proceedings in a justice court and for taking statements of prisoners in the jail.

The county attorney's stenographer is entitled to extra compensation if appointed to report proceedings in a justice court but is not entitled to extra compensation for taking statements of prisoners in jail.

Paul E. Hogan, Esq.,
County Auditor,
Billings, Montana.

December 27, 1924.

My dear Mr. Hogan:

You have requested my opinion whether stenographers employed by the county attorney and district judges are entitled to extra compensation for taking testimony in justice courts and statements of prisoners in the county jail.

Section 11783, R. C. M. 1921, provides, in part, as follows:

"The testimony of each witness, in case of homicide, must be reduced to writing, as a deposition, by a stenographer appointed by the county attorney, under the direction of the magistrate; and in other cases the testimony of each witness shall be taken by a stenographer appointed by the county attorney upon demand of the prosecuting attorney, or the defendant, or his counsel."

Taking testimony in a justice court is no part of the duties of a district court stenographer. He can not be compelled to do this work. If he does do it, it is no doubt because he was appointed by the county attorney under the provisions of the above statute. The salary he receives does not include compensation for his work as a stenographer appointed to take testimony in a preliminary hearing held before a justice of the peace. There is no reason why he should not be appointed to do this work provided it does not interfere with his regular duties as district court stenographer, and, if he does do the work he is entitled to compensation therefor.

The same is largely true of a stenographer employed in the office of the county attorney. In the absence of an understanding to the contrary, a stenographer employed in the office of county attorney, who is paid by the county, is employed to do the stenographic and clerical work necessary to be done to enable the county attorney to discharge the duties of his office. He is employed and paid as a county employee.

Taking testimony at a preliminary hearing where it is required is a result of the county attorney performing his duty rather than a means of enabling him to perform it. It is a part of the procedure of the court sitting as an examining magistrate, not a part of the prosecution itself.

Court reporting not being a part of his regular employment, there can be no objection to a stenographer employed in the office of a county attorney doing this work in a justice's court if he is appointed so to do under the statute, and he may receive compensation therefor. In doing this work he is an employee of the county and his status is that of an employee of the county who has been employed to do extra work by the county, which may lawfully be done.

As to taking statements of prisoners in jail, if this is for the use of the county attorney they should be taken by his stenographer as a part of the stenographer's duties for which he is paid by the county.

Very truly yours,

L. A. FOOT,
Attorney General.