

**Attorneys' Fees—Fees—County Commissioners—Special
Counsel—Mandamus—Office—Counties.**

Attorneys' fees may be paid by the county to special counsel in a mandamus proceeding against the county commissioners, but not when a county commissioner employs counsel to defend a suit against him to try the title to his office.

Nick Langshausen, Esq.,
County Attorney,
Winnett, Montana.

August 24, 1927.

My dear Mr. Langshausen:

On July 23, 1927, this office rendered an opinion to you regarding the legality of the claim of Belden & DeKalb against Petroleum county for services rendered in certain actions.

I have recently had occasion to go into this question further and have arrived at the conclusion that my opinion rendered to you on July 23rd was incorrect insofar as the fee of Belden & DeKalb is concerned, relating to the action in which they defended the board of county commissioners in the mandamus proceeding.

It is my opinion in that action the county was interested and that the defense interposed by the county commissioners was on behalf of the county within the meaning of chapter 9 of the laws of 1927. It is, of course, elementary that the board of county commissioners may employ counsel to assist the county attorney. I believe as to that part of the claim of Belden & DeKalb for services rendered in connection with the mandamus case the county is liable.

As to the other claim for services rendered in connection with the writ to test the right to the office, I think the opinion heretofore rendered to you was correct, and particularly in view of the case of Board of Supervisors vs. Ellis, 59 N. Y. 620 wherein the court said:

“Nor was the expense of the litigation gone into by the defendant, to establish his right to the office of police commissioner, a legal and proper charge against the county. Not even, if it be, that the board formally authorized the litigation and agreed to pay the costs and charges. We are not required to decide whether the county might not under some circumstances have had such an interest in maintaining the validity of the law creating it a separate police district (laws of 1870, Chap. 497, p. 1132), as that its board of supervisors might not in its behalf lawfully undertake a litigation to that end and incur costs and charges therefor. It does not appear that in the action or proceeding now in question the validity of that law was in question, or that more was involved than the individual right of the defendant to the office. In that, the county as a corporate body, had no such interest as that the board of supervisors could lawfully engage it to a participation in the litigation, and to a payment of the costs and charges. It appears, then, that the charges above named were not such as that the defendant could lawfully claim and enforce them against the county.”

Very truly yours,

L. A. FOOT,
Attorney General.