County Attorneys—Stenographers—County Commissioners—Claims—Employment.

A county attorney has authority to employ a stenographer when such services are necessary to the proper discharge of his duties.

December 17, 1927.

C. E. Bracewell, Esq.,
    County Clerk and Recorder,
        Columbus, Montana.

My dear Mr. Bracewell:

You have requested my opinion whether the county commissioners have the right to disallow a claim for compensation of the stenographer for the county attorney when the county commissioners have provided by resolution that such stenographer is unnecessary.

The law relating to this matter has been definitely settled in this state in the case of In re Hyde, 73 Mont. 363. The rule was there laid down as follows:

> "Under the authorities, and in reason, we are of the opinion that the county attorney has the power and authority to bind the county for services of a stenographer if such services were necessary to the proper discharge of his duties as such officer, and that is all we are here called upon to decide.

> "Had the board disallowed the rejected item upon the ground that the services were not necessary, and introduced evidence to that effect, a question of fact would be presented, and the result might be otherwise."

Hence, you will observe that the question is one of fact depending upon the necessity for the services of a stenographer. The presumption is that the expense incurred by the county attorney is necessary. The court in the above case in this connection said:

> "The county attorney is presumed to have regularly performed his duty (section 10606, R. C. M. 1921) and in the absence of any showing to the contrary we cannot presume that he has incurred unnecessary expense."

It is my opinion, therefore, in view of the above-cited case, that the county attorney has authority to bind the county for the services of a stenographer if the services are necessary to the proper discharge of his duties as county attorney, but not otherwise.

Very truly yours,

L. A. FOOT,
Attorney General.