

Employment — County Commissioners — Attorneys — Funds.

The county commissioners of A county cannot expend the moneys of A county for the employment of special counsel to assist the county attorney of B county to prosecute criminal cases in B county even though the owners of some of the property alleged to have been stolen reside in A county.

April 5, 1928.

J. H. Forster, Esq.,
County Attorney,
Malta, Montana.

My dear Mr. Forster:

You have requested an opinion on the following question:

“Can the commissioners of Phillips county authorize the payment of any money for the employment of special counsel to assist the county attorney of Blaine county to prosecute criminal cases (larceny of horses) instituted and prosecuted in Blaine county even though the owners or some of the owners of the horses claimed to have been stolen reside in Phillips county?”

I agree with your conclusion that there is no authority of law authorizing the commissioners of Phillips county to make such an expenditure of county funds.

Subdivision 8 of section 4952 R. C. M. 1921, defining what are county charges, provides that the same include the contingent expenses necessarily incurred for the use and benefit of the county. Under this authority this office has held that it is permissible for county commissioners to authorize the expenditure of money for the employment of special counsel to assist the county attorney of their county.

Where, however, such special counsel are employed to assist the county attorney of another county, it is my opinion that the services cannot be said to be rendered “for the use and benefit” of any other county except the one in which the prosecution is being conducted.

Very truly yours,

L. A. FOOT,
Attorney General.