

Court Stenographers—Counties—Supplies.

It is the duty of the county to furnish the court stenographer with stationery and supplies in the instances mentioned in the opinion as being necessary to the transaction of business by the court but as to stationery and supplies used by the court stenographer for the furnishing of transcripts to others than the judge there is no law requiring the same to be furnished by the county. He must furnish these himself.

Seth F. Bohart, Esq.,
County Attorney,
Bozeman, Montana.

June 11, 1929.

My dear Mr. Bohart:

You have requested my opinion whether the county is required to furnish an official court stenographer his stationery, typewriter ribbons, and supplies in general, for work other than that which he is required to do for the court or judge, and particularly supplies or paper for transcripts and copies thereof furnished litigants by the court stenographer in civil cases.

Section 8928 R.C.M. 1921 provides for the appointment of a stenographer for the district court by the judge thereof, and it designates the stenographer thus appointed as an officer of the court. Section 8929 requires the stenographer to attend all sittings of the court and take full shorthand notes of the testimony and of all proceedings given or had, except when the judge dispenses with his services in a particular case or with respect to a portion of the proceedings therein. His notes taken upon a trial or hearing are filed with the clerk of the court.

Section 8930 requires the stenographer to write out at length all objections made, the rulings, decisions and opinions of the court, and the exceptions taken during the trial or hearing, and these must be filed with the clerk of the court, and thereafter such exceptions may be settled in a bill of exceptions as provided by law.

Section 8931 requires him, upon request, to furnish to the defendant in a criminal case, or a party or his attorney in a civil case, a transcript of his stenographic notes, upon the payment to him of a prescribed fee. If the county attorney, attorney general or judge requires such copy in a criminal case, the stenographer is entitled to his fees therefor, which are payable by the county. If the judge requires such a copy in a civil case, to assist him in rendering a decision, the stenographer must furnish the same without charge. If a defendant in a criminal case is unable to pay for the transcript the same must be furnished by the stenographer and paid for by the county.

Section 8932 provides that in civil cases each party must pay into the hands of the clerk of the court \$3.00, which is paid into the county treasury and applied upon the salary of the stenographer, and Section 8933 as amended provides for the payment of the salary of the stenog-

rapher which is paid by the county or counties comprising the district, as are also his actual and necessary expenses of transportation.

It will be observed from the foregoing that certain of the duties which are performed by the stenographer constitute a part of the transaction of business by the court while others have no relation thereto. In the making of the stenographic notes and transcribing copies thereof, as required by the statute, and filing the same with the clerk, the stenographer acts as an officer of the court in the transaction of the business of the court. He makes permanent records of such transactions. Furnishing copies of his notes in civil and criminal cases to the judge to assist him in rendering a decision also constitutes a part of the transaction of business by the court. The furnishing of transcripts of testimony to litigants in civil cases and to the defendant, the county attorney or attorney general in criminal cases is not a part of the transaction of the business of the court. The court is not by law required to furnish these transcripts and could not be compelled to do so. It is the duty of the stenographer to furnish them, and mandamus will lie to compel him as an officer to perform his duty. (*Kranich vs. Supple*, 22 Mont. 184, 56 Pac. 20). He may only be compelled to furnish such transcripts in civil cases to private litigants when he has been paid the fees he is permitted to charge according to law. The fees charged are his, no part thereof going into the county treasury. While he is an officer of the court, when he performs this service it is a duty placed upon him by law that is not a part of the transaction of business by the court.

The county is required to furnish a courthouse, attendants, furniture, fuel, light and stationery sufficient for the transaction of business by the court. (Sections 4465 as amended, and 8856 R.C.M. 1921). By said Section 4465 the board of county commissioners is also required to contract for the county printing and provide books and stationery for the county officers, purchase such personal property as is necessary for the use of the county, and do all other things required by law or which may be necessary for the full discharge of the duties of the chief executive authority of the county government.

It is therefore the duty of the county to furnish the court stenographer with such things as are necessary for him to perform his duties under the law that constitute a part of the transaction of business by the court. I have been unable to find anything in the law which imposes upon the county the obligation to furnish the court stenographer with supplies other than for use in this respect. He is not designated a county officer by the statute and his duties do not make him such any more than the duties of the judge, the bailiff and other court attendants make them county officers. He is not therefore included among those for whom the county must furnish stationery and supplies under Section 4465, *supra*.

I am therefore of the opinion that as to those duties which constitute part of the transaction of business by the court it is the duty of the county to furnish the court stenographer with stationery and supplies, but that the furnishing of transcripts to persons other than

the judge in civil and criminal cases is not a part of the transaction of business by the court, and there being no provision at law for the furnishing of supplies and stationery for the latter purpose to the stenographer by the county the county is not required to furnish the same. The legislature evidently intended that this expense should be borne by the stenographer out of the fees he is entitled to charge for his transcripts.

Very truly yours,

L. A. FOOT,
Attorney General.