

of medicine to appear and attend such examination”.

These graduates of medicine must appear and answer all questions, hear testimony, personally examine the alleged insane person, and, if they so find, certify as to his insanity. Sections 1434, 1435, and 1436, R. C. M. 1921.

There is nothing in the statutes prohibiting the attendance of a physician from another county. Indeed, Section 1141, which provides that the fees and mileage of such physicians shall be paid by the county where the examination is held, by implication permits it.

While it is true that Section 3118 R. C. M. 1921 requires every person “wishing to practice medicine or surgery in any of the departments of this state” to apply for a certificate to the State Board of Medical Examiners, nevertheless attendance under subpoena at an insanity hearing cannot be considered as practicing medicine under section 3122 R. C. M. 1921.

Rather, we believe that attendance at such a hearing comes within the exceptions to that section, provided for in Section 3121, that “* * * * this act shall not apply * * * to physicians and surgeons in actual consultation from other states”. We are strengthened in this belief by the language of Section 1433, quoted above, “must also issue subpoenas for at least two **graduates of medicine**”. It is significant that the legislature did not use the words “two practicing physicians”.

Other problems arise concurrently with the question you submit which we are suggesting for your consideration.

Section 1433, above, provides that the judge or the chairman of the board of county commissioners, shall “subpoena.” Service of a subpoena of a state court outside of the state where it is issued is a nullity. (40 Cyc. 2165).

Again, it has been held that witnesses coming from without the state are entitled to mileage only from the state line to the place of trial, both coming to and going from the place of trial, but are not entitled to expenses incurred without the state. *Chilcott v. Rea*, 52 Mont. 134, 140; *Bullard v. Zimmerman et al.*, 88 Mont. 271, 281;

Opinion No. 113

Insanity Hearings—Physicians—Residence.

HELD: Irregularity does not necessarily result in an insanity hearing from the fact that one of the attending physicians resides in another state.

March 15, 1933.

You have requested an opinion from this office as to whether or not it would be permissible for the officials of your county to obtain the attendance of a doctor from Beach, North Dakota, which is ten miles from the county seat, at insanity hearings in Wibaux County, or whether the law requires attendance of a practicing physician resident in the State of Montana. You state that there is only one doctor residing in the county and the nearest other doctor resides at Glendive, in Dawson County, thirty-one miles away.

Section 1433, R. C. M. 1921, is as follows: “The judge, or in case of his absence, the chairman of the board of county commissioners, must also issue subpoenas for at least two graduates

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However, these considerations are de hors your inquiry, and we are not asked to render an opinion concerning them at this time. In answer to your question, it is our opinion that no irregularity necessarily results in an insanity hearing from the fact that one of the attending physicians resides in another state.