

Opinion No. 336.

Courts—Stenographers Pro Tempore,
Payment.

HELD: 1. When the regular court stenographer has been excused the compensation for the stenographer pro tempore is an additional expense to be borne by the counties in the manner provided by Section 8933, Revised Codes of Montana, 1935, and the regular stenographer is entitled to his full salary.

September 26, 1938.

Hon. John Hurly
Judge of the Seventeenth
Judicial District
Glasgow, Montana

My Dear Judge Hurly:

Your regular court stenographer was called out of the state because of illness in his family. In his absence you appointed a stenographer pro tempore, who served one day in that capacity. You have asked my opinion as to whether the counties in your judicial district must pay the compensation for the stenographer pro tempore, in addition to the regular salary of the permanent stenographer, or whether the compensation of the stenographer pro tempore must be deducted from the salary of the permanent stenographer. You have directed attention to Section 8934, Revised Codes of Montana, 1935, which is as follows:

“Stenographer pro tempore. The stenographer of any district court must attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order must be entered upon the minutes of the court. Employment in his professional capacity elsewhere is not a good and sufficient reason for such excuse. When the stenographer of any court has been excused in the manner provided in this section, the court may appoint a stenographer pro tempore, who must take the same oath and perform the same duties and receive the same compensation during the time of his employment as the regular stenographer.”

As I interpret that section, the stenographer may be excused upon presenting to the court reasons that appear good and sufficient. Whether such reasons are good and sufficient is within the discretion of the court, except for the one qualification that employment in a professional capacity elsewhere is not a good and sufficient reason. Then it would seem that it was the intent of the legislature that the stenographer should continue to draw his salary when regularly excused, and the qualification was inserted in order to prevent double compensation.

Therefore, it is my opinion that the regular stenographer is entitled to his salary and the expense of the stenographer pro tempore is an extraordinary and additional expense that must be borne by the counties comprising the judicial district and apportioned in the manner provided by Section 8933, Revised Codes of Montana, 1935, for the regular reporter.