

Dear Mr. Greenan:

You have submitted the following:

“House Bill No. 55 passed by the last session of the Legislature relating to probation officers, their appointment, salary and duties, provides in part that the salaries of both the probation officer and his chief assistant shall be paid out of the contingent fund of the county. Cascade County has no contingent fund and has not had for a period of upwards of fifteen years. We wondered if you would be so good as to give us your opinion as to whether this prohibits the payment of these salaries, or whether it would be permissible to pay them from the general or other fund.”

The contingent fund for counties was abolished by Section 2, Chapter 141, Laws of 1935, which amended Section 4633, R. C. M. 1921, and all surplus money in excess of the amount necessary for the retirement of the outstanding warrants against said fund, including interest thereon, was transferred to the general fund. Chapter 117, Laws of 1937 (H. B. 55) was an amendment of Section 12288, R. C. M. 1935, which was originally enacted as Section 14, Chapter 122, Laws of 1911, and thereafter several times amended and re-enacted as Section 12288, R. C. M. 1921. It was again amended by Chapter 185, Laws of 1933. Section 12288, R. C. M. 1921, provided that the salaries of probation officers should be paid out of the contingent fund. When amended in 1933, the wording of Section 12288, R. C. M. 1921, apparently was copied and it again provided that such salary should be paid out of the contingent fund although such fund had been expressly abolished in 1925. The same thing happened when Chapter 117 was enacted—the wording of the old act was copied. The person who drafted the bill apparently was unaware of the fact that the contingent fund had been expressly abolished in 1925.

We cannot believe that the Legislature, by inadvertently copying the words of the old act when amending Section 12288, R. C. M. 1935, intended to re-establish the contingent fund and repeal said Chapter 141, passed in 1925. Moreover, it is my understanding that

**Opinion No. 87.**

**Probation Officers—Salaries, From  
What Fund Paid.**

HELD: The salaries of probation officers are paid from the general fund.

April 16, 1937.

Mr. Phil G. Greenan  
County Attorney  
Great Falls, Montana

it has been the practice, ever since said contingent fund was abolished, for counties to pay salaries of probation officers out of the general fund.

In view of this practice, extending over a period of twelve years, and in view of the apparent mistake of the person who drafted Chapter 117, it is my opinion that the Legislature did not intend to re-establish the contingent fund which had been expressly abolished, but that the Legislature intended rather that the salaries of probation officers should be paid out of the general fund, in accordance with the practice which had been in operation for so many years.