

hearing before the Chairman of the Board of County Commissioners required by Section 1443, Revised Codes of Montana, 1935, are payable out of funds provided for the maintenance of the District Court.

December 30, 1938.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

My Dear Mr. Landoe:

You have requested an opinion as to the proper fund to charge for stenographer's fees for the transcript of testimony taken in an insanity hearing tried before the chairman of the board of county commissioners.

The authority of the chairman of the board of county commissioners to examine and commit an insane person is found in Sections 1431 to 1438, Revised Codes of Montana, 1935. Section 1431 provides that a magistrate shall issue a warrant for the arrest and examination of any person who is considered as so disordered in mind as to endanger health, persons or property. After such person is arrested, he is to be taken before "any district judge in the county for examination; provided, that if the district judge is absent from the county wherein such person is arrested, then the said insane person shall be taken before the chairman of the board of county commissioners." Again, in Section 1433, we find "The judge, or in his absence, the chairman of the board of county commisioners" may issue subpoenas for the examination by physicians. As has been said in *State ex rel Hoatson v. the District Court*, 95 Mont. 174, "If there is any class of cases which should be conducted with the utmost care to observe all the requirements of the statute, it is the cases conducted for the purpose of determining the sanity of a citizen."

To determine that a citizen is so insane as to be a menace to the peace of the state is an exercise of solemn judicial power. The legislature has recognized this; it has provided for emergencies by the authorization of a hearing before the chairman of the board of county commissioners, but it has also preserved the final right of decision in the judiciary by the enactment of Section 1443, which declares:

Opinion No. 9.

**Counties—Board of County Commissioners—Insanity Hearing—
Stenographer's Fees.**

HELD: 1. Stenographer's fees for the taking of testimony and preparation of transcript thereof in an insanity

“Whenever any insane person is examined and committed by hearing had before the chairman of the board of county commissioners, it shall be the duty of said chairman to have all the evidence reduced to writing, and the same, together with all orders, subpoenas, complaints, warrants, and papers used on said hearing, or made by said chairman of the board of county commissioners, shall be filed in the office of the clerk of the district court of the proper county, and said clerk shall enter upon the journal of the minutes of probate proceedings, a transcript of all proceedings had by the chairman of the board of county commissioners at any examinations and committal of an insane person, in the same manner as proceedings in probate in vacation are entered by the clerk of the court, and it shall be the duty of the district judge, at the first term of court after such examination, to examine and approve such proceedings of said insane inquest and committal, in the same manner as probate proceedings transacted by the clerk in vacation are approved; and in no case shall the finding of the chairman of the board of county commissioners be final. In all cases where hearings are had by the chairman of the board of county commissioners, the proceedings must be examined and certified and approved or rejected by the judge of the district court.”

Clearly, the hearing before the chairman of the board of county commissioners is a judicial proceeding and the charges for taking testimony, preparing the transcript, etc., should be paid out of the funds provided for the maintenance of the district court.