

No. 210

BASTARDY PROCEEDINGS—COUNTY ATTORNEY

Held: Inasmuch as the state has a direct interest in the outcome of bastardy litigation, the child being a ward of the state, and inasmuch as one-half of the county attorney's salary is paid by the state, it would be against public policy for the county attorney to represent a defendant in such a proceeding.

August 20, 1941.

Mr. D. W. Doyle
County Attorney
Pondera County
Conrad, Montana

Dear Mr. Doyle:

You wish to know whether or not the county attorney in one county of the state may defend a bastardy proceeding in another county in the state.

While the county attorney is referred to as such in the Constitution of Montana, nevertheless his salary is paid one-half by the county and one-half by the state and by statute (Section 4819, Revised Codes of Montana, 1935), he is required to attend the District Court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county.

He is a public officer because he represents the sovereign power of the people of the state.

In a bastardy proceeding the action, though civil in nature, is prosecuted in the name of the state (Section 12267, Revised Codes of Montana, 1935), and the county attorney on—being notified of the facts—must prosecute the matter on behalf of the complainant (Section 12271, Revised Codes of Montana, 1935).

I find no law which prohibits the county attorney from conducting his private practice just so long as it does not interfere with his duties as a county officer, it being understood his duties as a county officer are paramount to those within his private practice.

Inasmuch as the state has a direct interest in the outcome of this type of litigation, the child being a ward of the state, and inasmuch as one-half of the county attorney's salary is paid by the state, it is my opinion it would be against public policy for the county attorney to represent a defendant in such a proceeding.

Sincerely yours,

JOHN W. BONNER
Attorney General