

Opinion No. 20**Counties—County Officers—County Commissioners—Office Rent of
County Attorney—State Examiner, Report of**

- Held:**
- 1. The Board of County Commissioners cannot properly allow a claim for office rent for the office of County Attorney when such office is maintained outside of the Court House and suitable quarters are available in the Court House.**
 - 2. The report of the State Examiner is not a final determination of legality or illegality of a course of action by the Board of County Commissioners.**

May 10th, 1949.

Mr. Arthur B. Martin
County Attorney
Fallon County
Baker, Montana

Dear Mr. Martin:

You have requested an opinion on the following questions:

1. May the Board of County Commissioners of Fallon County in its discretion allow claims for office rent of the County Attorney when such office is not maintained in the Court House and space is available for such office in the Court House?
2. Does the report of the State Examiner, pointing out what he believes to be an unnecessary expense, necessarily mean that the allowance of such claims is illegal and that the Commissioners are without authority to allow them?

The factual situation, as you have stated it, is that since the inception of Fallon County, the office of County Attorney has never been maintained in the Court House, principally because the Court House is approximately three quarters of a mile from the business section of the city of Baker, and the respective County Attorneys have for business reasons preferred to maintain their office in the business section of Baker. For the past eight years the County has paid the office rent of the County Attorney in lieu of paying for stenographic help. The Board of County Commissioners has at all times been in favor of the

arrangement, however at the present time the Board is not sure that it is acting within its powers by allowing such an expense. The uncertainty of the Board stems from the June 1st, 1948, report of the State Examiner as to the affairs of Fallon County.

The report insofar as it is pertinent to this opinion is as follows:

"Claims, as Number 40859, \$245.00 and Number 41280, \$140.00 cover rent for the County Attorney. This appears to be an unnecessary expense of the taxpayers, as ample space could be provided for the Attorney at the Court House."

At the outset it is necessary to ascertain the weight that is to be accorded to a report of the State Examiner. The statutory authority for the Examiner's Report is Section 210, Revised Codes of Montana, 1935. Sub-division 7 of Section 210 is as follows:

"The State Examiner, or his assistants, after the examination of the affairs of any county officers, must make report of such examination to the Board of County Commissioners and to the County Attorney of such County, within thirty days after such examination; and if any violations of law or non-performance of duty is found on the part of any County officer or Board, such officer or Board must be proceeded against by the County Attorney of the County as provided by law."

The above quoted section was referred to in the case of *State v. Ray*, 88 Mont. 436, 294 Pac. 368, wherein the court said:

"The reports are simply intended for the guidance of the County Commissioners and the County Attorney and, in themselves, are not a source of evidence as to the facts stated in them. The Legislative scheme for making and publishing these reports was designed for the purpose, also, of advising the electors of the county of the faithfulness of their public servants."

It is apparent from a reading of Sub-division 7 of Section 210 *Supra*, and the comment thereon in *State v. Ray*, *supra*, that it was not the intent of the Legislature that the Report of the State Examiner should be binding upon anyone. The Reports are simply for the purpose of informing the officials and the public of the manner in which the public business is being taken care of. Whether or not a certain procedure is lawful or unlawful cannot be ultimately determined by the State Examiners Report.

The only provision relative to the location of County Offices is Section 4735, Revised Codes of Montana, 1935, which provides that all County Officers must keep their offices at the "County Seat." The general rule is that "County Seat" is the town or city in which the Seat of County Government is located. (20 C. J. S., Counties, Section 53; 14 Am. Jur., Counties, Section 16.) Thus, the only restriction is that the offices be situate at the County Seat, the statutes do not say that such offices be situate in the Court House.

However, a determination that County Offices need not be in the Court House does not mean that the County will provide the means to maintain offices elsewhere when room is available in the Court House. Section 4465.6, Revised Codes of Montana, 1935, provides as follows:

“The Board of County Commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: When there are no necessary county buildings, to provide suitable rooms for county purposes.”

Under the above quoted section the Board of County Commissioners is given authority to provide office quarters when suitable quarters are not available. Certainly when suitable quarters are available in the Court House for the office of the County Attorney, such office cannot legally be maintained elsewhere at County expense. Such procedure would conflict with the plain meaning of Section 4465.6, *supra*.

Therefore it is my opinion that while the office of County Attorney need not be maintained in the Court House, the Board of County Commissioners cannot properly allow a claim for office rent for the office of County Attorney when such office is maintained outside of the Court House and suitable quarters are available in the Court House.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.