

Opinion No. 1.

**State Examiner — Reports of Affairs
of County Commissioners — Gov-
ernor — Attorney General —
County Attorney — Duties.**

HELD: The state examiner must make a report to the Governor and the Attorney General of the result of an examination of the affairs of a board of county commissioners, however, only the results of such report need be furnished.

January 22, 1953.

Mr. Robert E. Towle
Bank Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

Prior to your appointment, your office submitted the following question for an official opinion:

Is it the duty of the state examiner to file copies of all county examination reports with the governor and the attorney general? If so, should the full report be filed or will the examiner's comments on the results suffice?

Section 82-1002, Revised Codes of Montana, 1947, provides:

"Duties of the state examiner. The duties of the state examiner and his assistants are:

(6) The state examiner, after examination of the affairs of any state officer, board of institution, or board of county commissioners, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or non-performance of duty is found on the part of such officer or board, they must be proceeded against by the attorney general or county attorney as provided by law.

(7) 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 violation 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."

In *State vs. Ray*, 88 Mont. 436, 294 Pac. 386, the court stated:

"The reports are simply intended for the guidance of the county commissioners and the county attorney, and, in themselves, are not the 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."

Although the language of the statute is clear and unambiguous, and, as such, the statute construes itself, (*State vs. Mountjoy*, 82 Mont. 594, 268 Pac. 558) the necessity for furnishing a copy of the results of such a report to the Governor and the Attorney General is amply illustrated by the duties which the Constitution and statutes of Montana enjoins upon those officers. The Governor must see that the laws are faithfully executed (Section 5, Article VII, Constitution of the State of Montana), and the Attorney General must exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices. (Section 82-401 (5), Revised Codes of Montana, 1947.) Therefore, it is made mandatory that the Governor and Attorney General receive such a report in order to perform their respective duties.

The statute clearly states that only the result shall be reported to the Governor and the Attorney General. It is in this respect that the statute distinguishes between the report to be made to the Governor and the Attorney General, and the report which is to be made to the Board of County Commissioners and the County Attorney. The portion of the statute which deals with county officers deletes the phrase "of the result of such examination." This indicates a legislative intent to provide a detailed report only to the county commissioners and the county

attorney, they being the officers directly charged with the responsibility of acting upon the findings of the examiner.

It is therefore my opinion that the state examiner must report to the governor and the attorney general the result of an examination of the affairs of a board of county commissioners. However, only the result of such report need be furnished.