

Opinion No. 21

**COUNTY ATTORNEYS; Duties, Advisory duties, County Airport Board
—AIRPORTS; Attorneys, duty of County Attorney—Sections
16-3101, 16-3102, 16-3105, RCM, 1947**

Held: County attorney is not required by law to render legal services to the county airport board. If the commission desires his services he is entitled to be paid accordingly.

August 8, 1961

Mr. Harold J. Pinsoneault
County Attorney
Missoula, Montana

Dear Mr. Pinsoneault:

You have requested my opinion as to whether or not the county attorney is required by law as one of his duties to render legal advice to the Missoula County Airport Board.

Section 16-3101, Revised Codes of Montana, 1947, provides: "The county attorney is the public prosecutor, and must: (6) give when required, and without fee, his opinion in writing **to county, district and township officers**, on matters relating to the duties of their respective offices;" (Emphasis added). Section 16-3105, R.C.M., 1947, provides: "The county attorney must perform such other duties as are prescribed by law." Section 16-3102, R.C.M., 1947, provides: "The county attorney is the legal advisor of the board of county commissioners. . ."

In *State v. Hale*, 129 Mont. 449, 291 Pac. (2d) 229 (1955) at page 460, the Montana Supreme Court said:

"Further in *State v. Hale*, 126 Mont. 326, 249 Pac. (2d) 495, again on the first appeal, it was also erroneously determined that the planning, construction and maintenance of the Missoula County Airport were county functions done for county purposes. RCM, 1947, Section 1-822, which is relied on as supporting that view, in fact states that these activities are 'county functions and purposes **as well as public and governmental.**' (Emphasis supplied.)

"That the business of the Missoula County Airport is not strictly and exclusively a county function is evidenced by the fact that its affairs are conducted not by the county commissioners, but by a separate board called the Airport Board. The \$600 warrant in question here was not paid out of county funds, but was drawn on the 'Airport Commission Fund'. This fund may be raised by taxation, RCM, 1947, Section 1-816, or may result from federal or state aid, RCM, 1947, Section 1-818.

". . . Specifically we are not aware of any statute that makes it the duty of the county surveyor to do the work of the airport board without compensation over and above his salary . . . As county surveyor he was not called up to render these services because of his office."

If doing survey work for the Missoula County Airport Board is not part and parcel of the county surveyor's job, as held in the Hale case, supra, it follows that since there is no statute expressly directing the county attorney to render legal advice to this same board, he must fall within the same category as the county surveyor and is not bound to advise the Board. Rather, being on the same plane as the county surveyor for purposes here, the county attorney would be entitled to additional compensation assuming the commission was desirous of retaining or obtaining his services. A similar conclusion was reached in the case of City County Airport Boards in Opinion No. 69 of Volume 28, Official Report and Opinions of the Attorney General.

It is therefore my opinion that the county attorney is not compelled or required by law to render legal services or advice to the Missoula County Airport Board. If this commission desires his services, he is entitled to be reimbursed for them.

Very truly yours,
FORREST H. ANDERSON
Attorney General