

VOLUME NO. 36**Opinion No. 108**

COUNTY ATTORNEY—cost of prosecuting crimes committed at state prison not county expense; DEPARTMENT OF INSTITUTIONS—cost of prosecuting crimes committed at state prison responsibility of Department of Institution; STATE PRISON — cost of prosecuting crimes committed at state prison responsibility of Department of Institutions. Sections 16-2411, 16-3101, 16-3802, Revised Codes of Montana 1947.

HELD: The Department of Institutions is liable, under section 16-3802 (2), R.C.M. 1947, for that portion of a Deputy County Attorney's salary spent on prosecuting offenses committed at the Montana State Prison.

November 18, 1976

Robert H. Mattson, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Mattson:

You recently requested my opinion on the following question:

Is the State Prison or the Department of Institutions liable under Section 16-3802 (2), R.C.M. 1947, to reimburse Powell County a portion of a Deputy County Attorney's salary?

It is my understanding that this question arose when the Powell County Attorney, at the direction of the Powell County Commissioners billed the State of Montana for the time his staff spent prosecuting offenses committed at the Montana State Prison. In examining the itemized bill submitted by Powell County, it is evident that most, if not all, of the charges are connected with the prosecution of offenses which occurred at the Prison.

Section 16-3101, R.C.M. 1947 sets forth the duties of a county attorney and reads in pertinent part as follows:

The county attorney is the public prosecutor and must:

1. 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;
2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;
3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions of the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

Section 16-2411, R.C.M. 1947, reads as follows:

Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

The above statutes leave no doubt that it is the duty of a county attorney and his deputies to prosecute all public offenses which occur within the limits of his county. Since the Montana State Prison is located in Powell County it is the duty of the Powell County Attorney to prosecute all public offenses which occur at the Montana State Prison.

Prior to 1975 it fell upon the county to pay all expenses incurred in the prosecution of criminal cases by the county attorney. This was provided for in section 16-3802 (2), R.C.M. 1947, which read as follows:

The following are county charges:

2. One-half of the salary of the county attorney, **and all expenses incurred by him in criminal cases arising within the county.** (Emphasis supplied)

In 1975 the legislature, recognizing the financial burden placed on Powell County due to the presence of the Montana State Prison, amended section 16-3802, *supra*, to read, in pertinent part, as follows:

- (1) The following are county charges:
 - (b) One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.
- (2) Notwithstanding the preceding subsection, **all costs of a criminal prosecution**, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions. (Emphasis supplied)

The effect of the amendment was to remove "... all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison..." from enumeration as a county charge. The amendment clearly placed the obligation for such costs on the department of institutions. Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing to construe. **Olson's v. Manion's Inc.**, 162 Mont. 197, 510 P.2d 6 (1973). It was, and is now, the duty of the Powell County Attorney to prosecute offenses committed in the state prison. The 1975 amendment to section 16-3802, *supra*, merely made "all costs" of such prosecutions an obligation of the department of institutions.

THEREFORE, IT IS MY OPINION:

The Department of Institutions is liable, under section 16-3802 (2) R.C.M. 1947, for the portion of a Deputy County Attorney's salary spent on prosecuting offenses committed at the Montana State Prison.

Very truly yours,

ROBERT L. WOODAHL
Attorney General