

VOLUME NO. 36**Opinion No. 110**

COURTS—Officers; Court Reporters; Taking testimony before grand jury; GRAND JURY—Court reporter as stenographer before; Sections 93-1901, 93-1902, 95-1406, Revised Codes of Montana 1947.

HELD: 1. The taking of grand jury testimony is not an official duty of the official court reporter.

2. Any work an official court reporter performs as an employee of the grand jury entitles the reporter to additional compensation for such work performed.

December 3, 1976

Mr. Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, MT 59801

Dear Mr. Deschamps:

You have requested my opinion concerning the following question:

Do the duties of official court reporters include the taking of testimony before the grand jury called by the judge for which the court reporter is employed?

The factual context in which this question arises involves a situation whereby a district judge calls a grand jury to investigate unsolved homicides in the county. The judge's reporter is directed by the court to transcribe the proceedings before the grand jury. The reporter takes the testimony before the grand jury and submits claims to the county for per diem while engaged as a court reporter for the grand jury. Two of these claims are paid while others are held in abeyance pending determination of the question as posed above.

Section 93-1902 R.C.M. 1947, sets forth the duties of a court reporter as follows:

Each reporter must, under the direction of the judge attend all sittings of the court, take full stenographic notes of the testimony, and all proceedings given or had thereat, except when the judge dispenses with his services in a particular cause, or with respect to a portion of the proceedings therein...

Section 93-1901 R.C.M. 1947, provides that a court reporter:

...is an officer of the court...and...must subscribe the constitutional oath of office...

Section 95-1406 (e) R.C.M. 1947, provides:

(1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses...

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman (of the

grand jury) not to disclose any testimony or names of any witnesses except when so ordered by the court....

These sections leave unanswered the question of whether the grand jury is the "court" of which the reporter is an officer and must attend all sittings.

The Montana Supreme Court has stated:

A grand jury is a part of the court and must conduct itself in compliance with the statutes and Constitution in the same manner as any other part of the judicial system. 38 C.J.S., Grand Juries, sec. 1b, page 981, 24 Am. Jur., Grand Juries, sec. 2, page 832. **State ex rel. Adami v. District Court**, 124 Mont. 282, 220 P.2d 1052 (1950).

38 C.J.S., Grand Juries, §1 (b), page 981, states:

A grand jury is a constituent part or branch of a court having general criminal jurisdiction; it is an arm, agency, or adjunct of the court, **but it is not the court.** (Emphasis added)

The grand jury is not the "court," referred to in §93-1902, R.C.M. 1947, of which the reporter must attend all sittings. If it were, there would be no need for the reporter to take a separate and distinct oath as is required by §95-1406 (e) (2), R.C.M. 1947. If the reporter must sit at the meetings of the grand jury as part of his official duties under §93-102, R.C.M. 1947, the discretion given the grand jury under §95-1406 (e) (1), R.C.M. 1947, as to whether or not a stenographer shall even be employed, would be a nullity and meaningless. It is presumed the legislature does not pass useless or meaningless legislation. **State ex rel. City of Townsend v. D.A. Davidson**, 166 Mont. 104, 531 P.2d 370 (1975); **Helena Valley Irrigation District v. State Highway Commission**, 150 Mont. 192, 433 P.2d 791 (1967).

The grand jury, pursuant to §95-1406 (e) (1), R.C.M. 1947, possesses discretion as to whom they wish to employ as a stenographer, or even if they wish to employ a stenographer. If the grand jury wishes to employ a stenographer, they are not required to automatically accept the court reporter of the presiding judge.

THEREFORE, IT IS MY OPINION:

1. The taking of grand jury testimony is not an official duty of official court reporters.
2. Any work an official court reporter performs as an employee of the grand jury entitles the reporter to additional compensation for such work performed.

Very truly yours,
ROBERT L. WOODAHL
Attorney General