

VOLUME NO. 36**Opinion No. 32**

**COUNTY ATTORNEYS — Joint employment by county and state;
OFFICES AND OFFICERS — County Attorneys, joint employment.
Sections 16-3101 and 16-3102, R.C.M. 1947.**

**HELD: A county attorney, for purposes of administration, is jointly
employed by both the county and the state.**

October 10, 1975

Mr. Lawrence P. Nachtsheim
Public Employees' Retirement Division
Department of Administration
1712 Ninth Avenue
Helena, Montana 59601

Dear Mr. Nachtsheim:

You have requested my opinion as to whether a county attorney is employed by the county, by the state, or both. It is my understanding that this question must be resolved in order to determine the proper amount the position of county attorney should pay for social security purposes.

A county attorney is not an "employee" in the legal sense of the word. The office of county attorney is a public office, and the county attorney is a public

officer under the definition in **State ex rel. Barney v. Hawkins**, 79 Mont. 506, 528; 257 P. 411 (1927). However, it must be recognized that for purposes of administration, public officers have a more specific employer than that of "the people". We then turn to the political subdivisions which were created to administer government. Among these political subdivisions are the state and the county.

Section 16-3101 sets forth the duties of a county attorney. Section 16-3101(1) requires the county attorney to represent the state in all matters to which it is a party within the limits of his county. Subsections (2), (3) and (9) of section 16-3101 also refers to duties the county attorney has to the state.

Section 16-3101(6) requires the county attorney to give his opinion to county, district and township officers on matters relating to the duties of their respective offices. Section 16-3102 names the county attorney as legal advisor to the county commissioners. These statutes clearly set forth the fact that the county attorney has duties to perform for both the state and the county.

This principle of joint employment is further supported by section 25-601 which provides that the salary of the county attorney shall be paid "one-half from the general fund of the county and the other one-half from the state treasury upon warrant of the state auditor". Until 1972, this was a constitutional requirement. (Article VIII, Section 19, 1889 Montana Constitution). Further, in the chapter on County Charges, section 16-3802, enumerates a county charge as "One-half of the salary of the county attorney...."

The principle of joint employment of a county attorney was recognized in 17 OPINIONS OF THE ATTORNEY GENERAL, No. 196, where Attorney General Harrison J. Freebourn stated:

The county attorney is more than a mere county officer, his duties extend beyond the confines of the county and down into the subdivisions thereof. The county attorney is primarily an officer of the state, he must prosecute in the name of the state and on its behalf, and he is, in this respect, an assistant to the Attorney General and under his supervision. (Section 4819, R.C.M. 1935; *State ex rel. Nolan v. District Court*, 22 Mont. 25, 55 Pac. 916). In recognition of this principle, half his salary is paid by the state and half by the county for which he is elected. (Article VIII, Section 19, Montana Constitution).

He is also the legal advisor of the county and all the subdivisions, the school district, irrigation districts and townships.

From the above-cited statutes and the language in 17 OPINIONS OF THE ATTORNEY GENERAL, No. 196, it is clear that the county attorney is required to perform duties for both the state and the county. For the specific duties the county attorney is required to perform for the state, the state pays one-half of his salary. For the specific duties the county attorney is required to perform for the county, the county pays one-half of his salary.

THEREFORE, IT IS MY OPINION:

A county attorney, for purposes of administration is jointly employed by both the county and the state.

Very truly yours,
ROBERT L. WOODAHL
Attorney General