

VOLUME NO. 36**Opinion No. 71**

COURTS — Competency of accused, power to determine; CRIMES AND CRIMINAL PROCEDURE — Competency of accused, power to determine; JUSTICE COURT — Appeal from; Justice Court Powers, cannot determine competency of accused. Article VII, Section 5, Constitution of Montana, 1972; Section 95-205, 206, Revised Codes of Montana 1947; Section 302, R.C.M. 1947; Sections 95-501 et seq. R.C.M. 1947; Section 95-2009, R.C.M. 1947.

HELD: Justices of the peace and city judges have no jurisdiction to commit persons charged with criminal offenses for psychiatric examination.

April 13, 1976

Mr. John G. Winston
Silver Bow County Attorney
Butte, MT 59701

Dear Mr. Winston:

You have requested my opinion on the following question:

Whether justices of the peace or city judges have the jurisdiction to commit persons charged with criminal offenses for psychiatric examination?

In order to answer your question it is necessary first to examine those statutes and constitutional provisions which define courts and establish the authority of the courts. Article VIII, §5, Constitution of Montana, 1972, states in pertinent part:

Justice courts have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

Section 95-302 designates the jurisdiction of justice courts. For purposes of this opinion the relevant portion of the statute is subsection (c):

Jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings.

No similar provision exists as to city judges. The authority of any judge to commit persons charged with a crime for psychiatric examination is contained in Title 95, Chapter 5, entitled "Competency of Accused". The only language used in that chapter which is relevant to this opinion is the use of the term "court"

throughout the chapter and references made to "county attorney" and "clerks of court" in 95-505 and 95-506.

Section 95-205 defines "court" as:

a place where justice is judicially administered and includes a judge thereof.

Section 95-206 defines "judge" as:

a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace or police magistrate **when a particular context so requires.** (Emphasis supplied)

Therefore, a justice of the peace or a city judge **may** be a judge or a court within the meaning of Chapter 5, Title 95, if "**the context so requires.**"

It is necessary at this point to examine the context of your question in order to determine whether justices of the peace and city judges constitute "courts" within the meaning of the competency statute.

The usual case where competency is involved is where a person is accused of the commission of a felony. In felony cases city courts have no jurisdiction as committing courts; justice courts, by virtue of section 95-302(c) may act as examining or committing courts. It would be in this role as an examining or committing court that an accused might be sent for psychiatric examination. Since city courts do not have that authority to examine or commit then they may not commit accused persons for psychiatric evaluation.

The competency statute is not specifically limited to felony cases. However, the use of the terms "clerk of court" and "county attorney" is enlightening. The rule is that in construing a statute the courts must look to the language employed and the object sought to be accomplished. **Swords v. Siminco**, 68 Mont. 164, 216 P. 806 (1923). With that rule in mind it is evident that the legislature was referring to the district courts in enacting the statute in question. In **State v. Tropf**, 32 St. Rptr. 56 (January 23, 1975) the court stated in reference to police courts (now known as city courts) that:

It is well founded in Montana law that the police courts are courts of limited jurisdiction and such courts have only such authority as is expressly conferred upon them.

The Supreme Court has had occasion in the past to examine the nature of justice courts as well. In **Bailey v. State**, 163 Mont. 380, 517 P.2d 708 (1974) the court found that justices of the peace were not subject to disqualification by affidavit. In **State v. Snider**, 32 St. Rptr. 1056 (October 28, 1975) the court held that justices of the peace do possess the authority to issue search warrants in felony cases. In both of those cases the court examined the entire context in which the issue arose. Those cases also reflect the court's exercise of great care in following the rule that courts of limited jurisdiction have only such authority as is expressly conferred upon them.

In the present context a number of circumstances must be considered. All felonies must be tried in the district court. Very seldom will the competency of

the accused to stand trial become an issue in justice court. The use of the term "county attorney" in the statute might be applicable to justice courts as well as district courts but the term "clerk of court" is applicable only to district courts. Since the role of the clerk of court in 95-505 is essential the inference is clear that the statute was intended only to apply to district courts. Justice courts do have some authority as examining and committing courts in felony cases but an accused's right to determination that he is competent to stand trial is protected by the fact that he must be bound over to the district court for trial at which time his competency may be determined.

Any right which a criminal defendant may have to a hearing as to his mental competency is protected by his right of appeal. All convictions from city and justice courts are appealable to the district court. Section 95-2009 requires that all cases on such appeal must be tried anew in the district court. **Bailey v. State, supra**, held that the provision provides a plain, speedy and adequate remedy at law. While **Bailey** dealt with the statute on substitution of judges the decision is equally applicable here.

The question is not, as you indicate, whether anything in the statute excludes justices of the peace and city judges from its application but, rather, whether there is anything in the statute which requires the inclusion of those courts. I find no authority for a holding that justice and city courts were meant to be included within the terms of Chapter 5, Title 95.

THEREFORE, IT IS MY OPINION:

Justices of the peace and city judges have no jurisdiction to commit persons charged with criminal offenses for psychiatric examination.

Very truly yours,

ROBERT L. WOODAHL
Attorney General