

VOLUME NO. 37

OPINION NO. 121

ACCIDENTS - Filing claims with Department of Administration;
ATTORNEYS - Tort claims; fee regulation; DEPARTMENT OF
ADMINISTRATION - Tort claims against the state; STATE - tort
claims against, filing; REVISED CODES OF MONTANA, 1947 -
Sections 82-4316.1, (1), (3), 92-619(1), (2), 82-4318,
82-4319.

HELD: Section 82-4316.1 requires an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration. The district court of Lewis and Clark County has the power to regulate such fees in conjunction with claims which are not litigated. In the case of the litigated claims, the district court before which the case is tried has regulatory power. The method and extent of its regulation is a matter for the court's discretion.

17March 1978

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
Capitol Station
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion on the following question:

Does section 82-4316.1, R.C.M. 1947, require an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration, and if so, what entity has power to regulate such attorney fees?

Section 82-4311 provides that "[a]ll claims against the state arising under the provisions of [the Montana Comprehensive State Insurance Plan and Tort Claims Act] shall be presented to and filed with the department of administration." Section 82-4312 contains a similar provision requiring filing of claims against a political subdivision with its secretary or clerk.

Section 82-4316.1, the statute to which you refer, states as follows:

- (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorneys and the claimant.
- (2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.
- (3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.
- (4) If an attorney violates a provision of this section, a rule of court adopted under this

section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

Because subsections (2) and (3) place regulatory power in the district court rather than the department, you question whether the contract must be filed with the department or only with the court if suit is filed.

Statutes are to be interpreted according to their plain meaning, Clark v. Hensel Phelps Construction Co., Mont. _____, 560 P.2d 515, 516-517 (1977), and sections of an act must be interpreted in such a manner as to ensure coordination with other sections of the act. Hostetter v. Inland Development Corp. of Montana, Mont. _____, 561 P.2d 1323, 1326 (1977).

The language of section 82-4316.1(1), "the attorney shall file with the claim a copy of the contract of employment . . .," clearly relates back to the sections governing filing of claims with the department or political subdivisions. The Workers' Compensation Act contains a similar provision. See section 92-619(1). It differs, however, in that fee regulation and rule making power is vested in the administrator of the workers' compensation division rather than the district court. Section 92-619(2). In neither case is regulation limited to claims which are ultimately the subject of suit. Cf. sections 82-4316.1 and 92-619.

This raises the question of which district court has power to regulate attorney fees incident to litigated and non-litigated tort claims. Section 82-4316.1(2) merely states that "'the district court' may regulate the amount of the attorney's fee." It does not specify which district court or distinguish between litigated and non-litigated claims.

In construing statutes, "[t]he meaning of a given term must be measured and controlled by the connection in which it is employed, the evident purpose of the statute, and the subject to which it relates. Fletcher v. Paige, 124 Mont. 114, 120, 220 P.2d 484 (1950). The reasons the Tort Claims Act did not centralize regulatory power in an administrative agency as in the case of the Workers' Act are evident. Because the act encompasses not only tort claims against the state, but also its political subdivisions, there is no central authority capable of monitoring the claims. Furthermore, regulation by the state or its political subdivisions, the parties against whom the tort claims will be filed, is

patently unacceptable. The district court, as a neutral arbiter, was the logical choice.

In determining which district court the Legislature referred to in section 82-4316.1(2), other sections of the act are relevant. Section 82-4321 recognizes that venue for litigated claims against the state or political subdivisions is not necessarily in the counties where the claims are filed. Sections 82-4318 and 4319 recognize that some claims will be settled without litigation. Section 82-4318 requires the district court "where the claim is filed" to approve settlement of claims against political subdivisions involving self-insurance or deductible reserve funds. Settlement of claims against the state must similarly be approved by the district court of Lewis and Clark County. Depending on whether a claim is settled or litigated, a different district court may be involved and in a better position to regulate the attorney's fee based on the complexity of the case, the time involved, and other relevant factors. See section 82-4316.1(2). The Legislature intended district courts hearing litigated claims to regulate attorneys' fees in those cases and the district court where the "claim is filed" [the district court of Lewis and Clark County in claims against the state] to regulate fees for non-litigated claims.

The district court is given responsibility and power to regulate attorneys fees. The method and extent of regulation is a matter for the court's discretion. See section 82-4316.1(2). Because the department is the entity with which all fee contracts must be filed, however, it is in a position to recommend proper and expedient implementation of the section.

THEREFORE, IT IS MY OPINION:

Section 82-4316.1 requires an attorney representing a party to a tort claim against the state to file a copy of his contract of employment with the Department of Administration. The district court of Lewis and Clark County has the power to regulate such fees in conjunction with claims which are not litigated. In the case of litigated claims, the district court before which the case is tried has regulatory power. The method and extent of its regulation is a matter for the court's discretion.

Very truly yours,

MIKE GREELY
Attorney General