

VOLUME NO. 37

OPINION NO. 62

CITY ATTORNEY - City court, misdemeanor crimes, responsibility to prosecute; CITY COURT - Misdemeanor crimes, city attorney, responsibility to prosecute; MISDEMEANOR CRIMES - City court, disposition of fees; REVISED CODES OF MONTANA, 1947 - Sections 11-811, 11-1602(2), 11-1603.1, 11-1608, 95-2008.

- HELD: 1. The city attorney has primary responsibility to prosecute in city court offenses committed in the city limits and charged as violations of state law.
2. Fines imposed and collected by a city judge for any offenses occurring in the city limits must be paid to the city treasurer.

8 September 1977

Richard A. Simonton, Esq.
Dawson County Attorney
Dawson County Courthouse
Glendive, Montana 59330

Dear Mr. Simonton:

You have requested my opinion on the following questions:

1. Is it the responsibility of the city Attorney or the County Attorney to prosecute offenses committed in the city limits and charged as violations of state law in city court?
2. What is the correct disposition of fines collected by a City Judge for offenses brought in the name of the State of Montana in city court for offenses occurring in the city limits?

Section 11-1602 gives city courts concurrent jurisdiction with justice courts.

Concurrent jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city

attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

Section 11-1603.1 governs the style of action brought:

Who named as plaintiff. (1) An action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

A city court can try misdemeanor cases under state law, brought in the name of the state, as well as actions for violation of city ordinances brought in the name of the city. Further, the city court has concurrent jurisdiction with the justice court to receive applications for search warrants and complaints charging felonies under state law.

The city attorney is required to "attend before the police court and other courts of the city and the district court, and prosecute on behalf of the city..." (section 11-811, R.C.M. 1947). Similarly, section 11-1608, R.C.M. 1947, provides that the city attorney "must prosecute all cases for the violation of any ordinance..." Section 11-1602(2), quoted above, empowers, but does not require, the city attorney to apply for a search warrant or to file a complaint charging a felony under state law in city court when the offense was committed within the city limits.

The county attorney is required by section 16-3101, R.C.M. 1947, to "attend the district court and conduct, on behalf of the state, all prosecutions for public offenses..." See also, State ex rel. Olsen v. Public Service Commission, 129 Mont. 106, 112-13 (1955); State ex rel. Woodahl v. District Court, 159 Mont. 112, 117 (1972). Therefore, there is a general, but clear, line of demarcation between the respective "responsibilities" of the city and county attorney. The county attorney is primarily responsible for instituting proceedings in district court; the city attorney is primarily responsible for instituting proceedings in city court.

Section 11-1602 empowers the city court to try misdemeanor cases. It also empowers the city attorney to initiate certain felony cases in city court. All other proceedings must then be handled by the county attorney in district court. While that section does not expressly empower the city attorney to prosecute misdemeanor cases in city court, the implication is clear. The city attorney has primary responsibility for proceedings in the city court, and that court has concurrent jurisdiction to try misdemeanor cases.

Nothing herein should be construed to prohibit the county attorney from instituting proceedings in the name of the state in city court for violations of state law. The question asked goes only to "responsibility," and the Legislature's intention in that regard is clear.

Your second question may be answered with reference to section 95-2008, R.C.M. 1947, which provides in part:

All fines imposed and collected by a justice or police court must be paid to the treasurer of the county, city or town as the case may be, within thirty (30) days after the receipt of the same, and the justice or police judge must take (sic) duplicate receipts therefore, one (1) of which he must deposit with the county or city or town clerk as the case may be.

This section is clear and unambiguous on its face. All fines imposed and collected in city court must be paid to the city treasurer. No distinction is made as to whether the offense charged was under state law or city ordinance. Therefore, for the purpose of collecting and remitting fines, that distinction is irrelevant.

THEREFORE, IT IS MY OPINION:

1. The city attorney has primary responsibility to prosecute in city court offenses committed in the city limits and charged as violations of state law.
2. Fines imposed and collected by a city judge for any offenses occurring in the city limits must be paid to the city treasurer.

Very truly yours,

MIKE GREELY
Attorney General