

VOLUME NO. 38

OPINION NO. 77

POLICE DEPARTMENTS - Costs of investigating felony offenses to be prosecuted by the county attorney;

COUNTIES - Costs for investigation of felony offenses by city police;

MONTANA CODE ANNOTATED - Sections 7-4-2712, 7-4-2716, 7-6-2351, 7-6-2426, 44-2-115, 46-8-201;

OPINIONS OF THE ATTORNEY GENERAL - 2 Op. Att'y Gen. No. 5 (1906), 5 Op. Att'y Gen. No. 377 (1913), 8 Op. Att'y Gen. No. 419 (1920), 10 Op. Att'y Gen. No. 63, 37 Op. Att'y Gen. No. 37 (1977), 38 Op. Att'y Gen. No. 31 (1979).

HELD: Charges incurred by city police in the preservation and preparation of evidence to be used in felony cases prosecuted by the county attorney in the name of the State are the financial responsibility of the county.

23 April 1980

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Dear Sirs:

You have requested my opinion on a question which I have phrased as follows:

Which governmental entity--state, county, or city--bears the financial responsibility for costs incurred after arrest by city police in the investigation of felony offenses against the laws of the State of Montana?

Your question concerns expenses generally involved in the preservation, evaluation, and preparation of evidence to be used at trial, e.g., costs of impounding vehicles, costs of scientific analysis of chemicals, costs of handwriting analysis.

Initially, it is clear that the costs of criminal investigation are not the responsibility of the State. Montana law generally makes the detection, investigation, and prosecution of crime a local function. While Montana has a State Criminal Investigation Bureau, Title 44, chapter 2, MCA, it functions to provide expert assistance upon the request of the other, primarily local, agencies charged with the responsibility of investigating criminal activity. § 44-2-115, MCA. I am aware of no statutory or constitutional authority for assessing the costs of investigation against the State, nor is there a fund in the State Treasury from which such costs could be paid. I therefore conclude that the costs of criminal investigation by local law enforcement officers are not chargeable to the State.

As a general rule, enforcement of state law is a county responsibility. The county attorney serves as the prosecuting attorney in virtually all felonies prosecuted in the name of the State. §§ 7-4-2712, 7-4-2716, MCA.

Virtually all expenses incurred in the trial of felonies are the responsibility of the county. See 37 Op. Att'y Gen. No. 37 (1977). The county attorney's expenses are a county charge. § 7-6-2426(2), MCA. The counties bear the initial responsibility for establishing and maintaining the district courts. §§ 7-6-2351, 7-6-2352, MCA. See 38 Op. Att'y Gen. No. 31 (1979). The provision of defense services for indigent criminal defendants is a county responsibility. § 46-8-201, MCA. The costs of serving arrest warrants, boarding prisoners, empanelling juries, procuring the attendance of witnesses and all expenses necessarily incurred by the coroner, are chargeable to the county. § 7-6-2426(3)-(6), MCA. In contrast, my research discloses no provision of State law requiring the cities and towns to bear any portion of the costs of such felony criminal prosecutions.

The expenses detailed in your letter are, in the final analysis, costs incurred in the prosecution of an offense. The county attorney's duty as public prosecutor includes the duty to acquire and prepare evidence, i.e., to investigate the case. See State ex rel. Juhl v. District Court, 107 Mont. 309, 314, 84 P.2d 979, 981 (1938). Section 7-6-2426(2), MCA, makes the county responsible for "expenses necessarily incurred by (the county attorney) in criminal cases arising within the county." It has long been recognized that investigation costs are county charges under this provision. 10 Op. Att'y Gen. No. 63; 8 Op. Att'y Gen. No. 419 (1920); 5 Op. Att'y Gen. No. 377 (1913); 2 Op. Att'y Gen. No. 5 (1906). In my opinion, costs incurred in the collection of evidence after arrest by city police are, in effect, "expenses necessarily incurred by (the county attorney) in criminal cases" and they are properly chargeable to the county.

Please bear in mind the limited scope of this opinion. It applies only in those circumstances in which the duty of prosecution rests on the county attorney. Further, it applies only to charges incurred for the preservation and preparation of evidence. I do not suggest that a city may request reimbursement from the county for the salary of officers who devote their time to investigation of felony offenses against the State.

THEREFORE, IT IS MY OPINION:

Charges incurred by city police in the preservation and preparation of evidence to be used in felony cases

prosecuted by the county attorney in the name of the State are the financial responsibility of the county.

Very truly yours,

MIKE GREELY  
Attorney General