

VOLUME NO. 38

OPINION NO. 94

THIS OPINION SUPERCEDES VOLUME 38, OPINION NO. 77, WHICH IS WITHDRAWN.

POLICE - Responsibility for costs of analysis of evidence requested by county attorney;
MONTANA CODE ANNOTATED - Sections 7-4-2712, 7-4-2716, 7-6-2426(2), 7-32-4101.

HELD: The county bears the financial responsibility for charges incurred at the request of the county attorney after arrest by city police for the preservation and preparation of evidence to be used in felony cases.

31 July 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 at the request of the county attorney after arrest by city police in the investigation of felony offenses against the laws of the State of Montana?

Your letters pose a hypothetical example in which, after arrest, the county attorney requests that a vehicle be impounded and certain items of evidence be forwarded to a laboratory for scientific and 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 prosecu-

tion 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 request by 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. §§ 7-4-2712, 7-4-2716, MCA. The county attorney's expenses are a county charge. § 7-6-2426(2), MCA. However, cities also have some responsibility in the enforcement of state laws. Section 7-32-4101, MCA, requires each city and town to organize and maintain a municipal police force, and the Montana Supreme Court has recognized that municipal police officers, as peace officers, are obligated to enforce the state's laws within their territorial jurisdictions. State ex rel. Quintin v. Edwards, 38 Mont. 250, 265-66, 99 P. 940 (1909); see also Andrieux v. City of Butte, 44 Mont. 557, 560, 121 P. 291 (1912).

These responsibilities overlap. Investigation and the gathering of evidence, generally accepted as police functions, are responsibilities which are often inseparable from the county attorney's prosecutorial function. See Hicks v. Orange County Board, 69 Cal. App. 3d 340, 238 Cal. Rptr. 101, 108 (1977). My research has disclosed no provision of state law nor decision of the Montana Supreme Court specifying who must pay the expenses incurred in carrying out these responsibilities. My understanding is that most counties and cities in the State have not encountered any serious conflict in deciding who must bear costs of the sort you have described. I do not wish to disturb the cooperative relationships that have been established in those counties and cities. However, it is my opinion that the expenses detailed in your letters, incurred at the request of the county attorney, are properly chargeable to the county. When city police marshal evidence in preparation for trial at the county attorney's request, the resultant expenses are "necessarily incurred" by them, as agents of the county attorney, "in criminal cases arising within the county." When such expenses are incurred directly by the

county attorney, they are explicitly a county charge under section 7-6-2426(2), MCA. See 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). Reason does not compel the conclusion that the expense may be shifted to the city merely because the city police act as the agents who incur the expense.

Please bear in mind the limited scope of this opinion. It applies only in those cases where a duty to prosecute rests with the county attorney and expenses are incurred by the city at his request after an arrest has been made. I do not suggest that a city may request reimbursement from the county for salaries of police officers who investigate felony crimes or for the cost of facilities necessarily maintained by the city as an incident to their criminal investigation responsibilities.

THEREFORE, IT IS MY OPINION:

The county bears the financial responsibility for charges incurred at the request of the county attorney after arrest by city police for the preservation and preparation of evidence to be used in felony cases.

Very truly yours,

MIKE GREELY
Attorney General