

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 38

COUNTY COMMISSIONERS - Authority over district court employees;  
COUNTY OFFICERS AND EMPLOYEES - District court employees;  
COUNTY OFFICERS AND EMPLOYEES - Soil Conservation District employees;  
COURT, DISTRICT - Employees, requirement to abide by county personnel policies;  
COURT, DISTRICT - Separation of powers with reference to county commissioners;  
MONTANA CODE ANNOTATED - Sections 3-1-113, 7-5-2101, 7-5-2102, 7-5-2107, 7-5-2108, 7-6-2111, 7-6-2112, 7-6-2202, 7-6-2351, 7-6-2511, Title 19, chapter 3, 39-51-102, 39-51-203, 39-51-204(2), 39-71-117, 76-15-501 to 529;  
MONTANA CONSTITUTION - Article III, section 1;  
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 20.

- HELD: 1. An employee who is paid by the county and receives fringe benefits therefrom is a county employee.
2. An employee who receives a county payroll check must abide by the personnel policies.
3. District court employees and Soil Conservation District employees who receive county payroll checks and fringe benefits are county employees.
4. District court employees are required to work a forty (40) hour week.
5. The scope of district court authority in relation to that of the county commissioners

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is an inappropriate question for an Attorney General's opinion.

30 October 1981

J. Fred Bourdeau, Esq.  
Cascade County Attorney  
Cascade County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion regarding the following questions relating to county employees and district court personnel:

1. Is an employee who receives a county payroll check and whose fringe benefits (such as PERS, health insurance, Workers' Compensation and Unemployment Insurance) are paid by the county considered a county employee?
2. Must an employee who receives a county payroll check abide by the personnel policies established by the Board of County Commissioners, including submitting time sheets?
3. Are the employees of the district court and such departments as the Soil Conservation District, which is supported in part by county funds and governed by a board whose employees receive payroll checks and fringe benefits, considered county employees?
4. Does the Board of County Commissioners have the authority to insist that employees of the district court work a forty (40) hour week as all other county employees are required to work?
5. Does the district court have the authority to establish personnel policies that differ from the personnel policies that apply to all other county employees?

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Your first question is whether an employee who receives a county payroll check and county fringe benefits is considered a county employee. The pertinent statutes which authorize fringe benefits, such as PERS, health insurance, Workers' Compensation and Unemployment Insurance, deem the recipients of these benefits employees of the county by the language used therein.

Section 7-5-2107, MCA, authorizes the county commissioners to "employ such persons as it deems necessary to assist the board in the performance of its duties." Section 2-18-702, MCA, provides that "[a]ll counties...shall...enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents." (Emphasis added.) There is no statutory authority for a county to include someone not employed by it (other than an officer or dependent) in its health insurance plan. The plain meaning of the words of the statute control its interpretation here, where the words are unambiguous, direct and certain. Rierson v. State of Montana, 37 St. Rptr. 627 (1980). Thus, employees covered by county health insurance plans are county employees.

Referring to unemployment insurance the declaration of state public policy states "[t]he achievement of social security requires protection against...[involuntary unemployment]. This can be provided by encouraging employers to provide more stable employment and by systematic accumulation of funds during periods of unemployment...." § 39-51-102, MCA. An employer or "employing unit" under this Act includes the State government or any of its political subdivisions. "Employment" means an individual's entire service for wages or under any contract of hire. Elected public officials are excluded from the definition of "employment." §§ 39-51-203, 39-51-204(2), MCA. Part II of the Act describes procedures for contribution to the fund by employers and their employees. It is clear from the language of this Act that employers participate in the unemployment insurance program for their own employees.

Continuing on to the Worker's Compensation Act, an employer under this Act includes a county. § 39-71-117, MCA. An employee is any person, except an independent

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contractor, "who is in the service of an employer, as defined by 39-71-117 under any appointment or contract of hire, expressed or implied, oral or written." § 39-71-118, MCA. Under the language of this Act, an employee for whom the county contributes to the Workers' Compensation Fund is clearly a county employee.

The Public Employees' Retirement System Act, Title 19, ch. 3, MCA, likewise defines a member of the system to be the employee of its contracting employer. Thus, in the event a county contracts with the PERS Board, personnel who become members of the system pursuant to that contract are county employees.

It is, therefore, clear that personnel who receive county payroll checks and benefits are considered county employees where such designation is relevant to the benefits described above.

Your second question is whether an employee who receives a county payroll check must abide by the personnel policies established by the Board of County Commissioners. Article XI, section 3, of the Montana Constitution directs the Legislature to declare the duties and responsibilities of the county commissioners.

Section 7-5-2101, MCA, provides:

General authority of county commissioners. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

Section 7-5-2102, MCA, states, "The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law,

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to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary." The Montana Supreme Court has long recognized that where powers are conferred on the Board of County Commissioners, but the mode in which the authority to be exercised is not indicated, the Board in its discretion, may select any appropriate mode or course of procedure. State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 998 (1947).

It is clear that the county commissioners have powers broad enough to establish rules and policies to facilitate and effectuate their statutory responsibilities.

The county treasurer is required by law to render an account of all monies received and disbursed, and disburses money only on orders of the board of county commissioners (except as otherwise provided by law). § 7-6-2111, MCA. The treasurer is required to make detailed monthly financial reports to the board. § 7-6-2112, MCA. The county clerk is likewise responsible to the commissioners to account for county finances. § 7-6-2202, MCA. It is clear that the personnel policies established by the board of county commissioners, including the requirement that employees submit time sheets are within the statutory and implied powers of the Board of county commissioners as necessary for the administration of county business.

Your third question is whether district court employees and employees of departments, such as the Soil Conservation Department, which are supported in part by county funds, and whose employees are on the county payroll and receive county benefits, are considered county employees. The county in which the district court is established is charged with the cost of the court's maintenance. Out of the district court budget the county must pay most district court expenses, including salaries of court employees. §§ 7-6-2351, 7-6-2511, MCA. Thus, the district court finances are an integral part of the county budget and finance system. The district court employees are paid by the county, receive the same county benefits as do all other county employees and are, therefore, considered county employees.



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A soil conservation district is a distinct governmental entity. See 37 Op. Att'y Gen. No. 20 (1977), § 76-15-215, MCA. To obtain money for its operation, the district acquires money in part through tax levies by the counties in which it is situated. The depository of these tax funds is in the treasury of the principal county. These funds are accounted for and disbursed through the county treasurer, clerk and auditor, upon the order of the district supervisors. §§ 76-15-501 to 529, MCA. The statutes governing conservation districts do not expressly designate district personnel as county employees to be included on the county payroll. However, in the event that the county does include the district personnel on its payroll, giving them the same benefits as are given to other county employees, to that extent the conservation district personnel must be considered county employees.

Your fourth question is whether the board of county commissioners has authority to insist that district court employees work a forty-hour week. Section 7-5-2108, MCA, provides that "full-time salaried county employees shall work a minimum of 40 hours per week." The term "county employee" is not specifically defined by statute. However, applying the discussion in the previous questions, district court employees are paid by the county and are considered county employees for administrative and salary related purposes. They are therefore "salaried county employees" under section 7-5-2108, MCA.

Your last question is whether the district court has authority to establish personnel policies that differ from those that apply to all other county employees.

District courts in Montana are clothed with inherent and statutory powers to do all that is necessary to render their jurisdiction effective. These powers naturally include the power to hire necessary court personnel. § 3-1-113, MCA; State ex rel. Board of Commissioners of Flathead County v. Eleventh Judicial District Court, 36 St. Rptr. 1231 (1979). Article III, section 1, of the Montana Constitution divides the powers of government into three branches and directs that no branch can exercise power belonging to another. The salary of court personnel comes out of the county budget. §§ 7-6-2351, 7-6-2511, MCA. As previously discussed, the board of county commissioners controls the county

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budget and its administration. At the same time, inherent in the separation of powers is the control by the judicial branch over its own administrative affairs and its own employees. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 101 P. 962 (1909). This obvious and inevitable overlap of powers has been recognized by the Montana Supreme Court in The Board of County Commissioners of Flathead County v. Eleventh Judicial District Court, 36 St. Rptr. at 1237, which stated, "The constantly changing demands upon the judicial system must be worked out in a spirit of independent identity and balance among legislative, executive, and judicial branches of government by reasonable interaction tempered with respect for the limitations of their power."

On this basis it appears that requiring district court employees to abide by county policies and regulations is not an undue interference upon the judicial branch. Such a requirement is, on the other hand, necessary to the county for the effective administration of county business. Although I make this observation about the balance of interests between the court and the county, in regard to district court employees abiding by county rules and policies, I must conclude that to expressly define the scope of judicial authority in relation to that of the county is inappropriate for an Attorney General's opinion. That question would be more appropriately disposed of either by an understanding between the individual judge and the county commissioners, or by a judgment in a court of proper jurisdiction.

THEREFORE, IT IS MY OPINION:

1. An employee who is paid by the county and receives fringe benefits therefrom is a county employee.
2. An employee who receives a county payroll check must abide by the personnel policies.
3. District court employees and Soil Conservation District employees who receive county payroll checks and fringe benefits are county employees.
4. District court employees are required to work a forty (40) hour week.

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5. The scope of district court authority in relation to that of the county commissioners is an inappropriate question for an Attorney General's opinion.

Very truly yours,

MIKE GREELY  
Attorney General