

VOLUME NO. 40

OPINION NO. 27

COUNTY ATTORNEYS - Rural improvement districts, legal
representation;

RURAL IMPROVEMENT DISTRICTS - Legal representation;
MONTANA CODE ANNOTATED - Sections 1-2-102, 7-4-2704,
7-4-2711 to 7-4-2717, 7-12-2101 to 7-12-2186, 7-12-2153,
7-13-218, 7-14-2138, 20-1-204, 50-2-115, 75-10-231,
77-1-111;

OPINIONS OF THE ATTORNEY GENERAL - 9 Op. Att'y Gen. at
55 (1920).

- HELD: 1. It is not the duty of the county attorney to represent rural improvement districts formed pursuant to sections 7-12-2101 to 2186, MCA.
2. As part of his private practice, a part-time county attorney may represent a rural improvement district subsequent to its creation under section 7-12-2113, MCA, and receive compensation therefor.

22 November 1983

Keith D. Haker
Custer County Attorney
Custer County Courthouse
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

Is it the duty of a county attorney to act as counsel for a rural improvement district formed pursuant to sections 7-12-2101 to 2186, MCA?

It is my understanding that several part-time county attorneys have been performing legal services to rural improvement districts on a fee basis, as part of their private practice, since these districts are independent taxing entities. If it is the duty of a county attorney to represent rural improvement districts, then part-time county attorneys would not be allowed to collect fees for this service.

The duties of county attorneys are prescribed by sections 7-4-2711 to 2717, MCA. It is provided that:

(1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county; and

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee.

§ 7-4-2711, MCA. The county attorney must also "perform such other duties as are prescribed by law."
§ 7-4-2717, MCA.

Rural improvement districts may be created by the board of county commissioners upon petition of 60% of the freeholders within the proposed boundaries. § 7-12-2102, MCA. Before creating a rural improvement district, the board of county commissioners must pass a resolution of intention to do so, give notice of the passage of the resolution of intent, and hold a hearing upon any protests made by affected property owners. §§ 7-12-2103 to 2112, MCA. After following these statutory procedures, the board of county commissioners may pass a resolution creating the special improvement district. § 7-12-2113, MCA. Prior to the formal creation of the district pursuant to section 7-12-2113, MCA, the board of county commissioners are acting in their capacity as county commissioners. The county attorney is the legal advisor for the board of county commissioners. Thus, any legal work required by the board prior to the formal creation of the rural improvement district is the duty of the county attorney.

Following the resolution of creation of the rural improvement district, the board of county commissioners acts in its capacity as a board of trustees for the district, except where a separate board of trustees is appointed for a multicounty district. See §§ 7-12-2121 to 2123, MCA. Upon creation of the district pursuant to section 7-12-2113, MCA, a separate legal entity with independent taxing authority comes into being. The statutes do not address the question of who is to perform the legal work incident to the business of the district.

As above noted, the county attorney must perform all duties required by law. § 7-4-2714, MCA. The Legislature has specifically required county attorneys to represent fire districts and conservation districts without fee. § 7-4-2711, MCA. In other parts of the Montana Code Annotated, the Legislature specifically provides for representation by the county attorney. See, e.g., § 7-13-218 (refuse disposal districts); § 7-14-2138 (road districts); § 20-1-204 (school districts and community college districts); § 50-2-115 (local boards of health); § 75-10-231 (solid waste management systems); and § 77-1-111 (state lands), MCA.

The intent of the Legislature is to be pursued in the construction of a statute. § 1-2-102, MCA. Since the Legislature has specifically enumerated the duties of the county attorney concerning other types of districts but has remained silent on the subject with respect to rural improvement districts, it is clear the Legislature did not intend that county attorneys have a duty to provide legal representation for rural improvement districts. This is supported by an earlier Attorney General's Opinion interpreting the 1919 version of the rural improvement district statutes. 9 Op. Att'y Gen. at 55 (1920). The logic of that opinion remains valid today.

Except as prohibited in section 7-4-2704, MCA, county attorneys may engage in private practice. As part of this private practice, a part-time county attorney may represent a rural improvement district subsequent to its creation under section 7-12-2113, MCA, and receive compensation therefor.

THEREFORE, IT IS MY OPINION:

1. It is not the duty of the county attorney to represent rural improvement districts formed pursuant to sections 7-12-2101 to 2186, MCA.
2. As part of his private practice, a part-time county attorney may represent a rural improvement district subsequent to its creation under section 7-12-2113, MCA, and receive compensation therefor.

Very truly yours,

MIKE GREELY
Attorney General