

VOLUME NO. 43

OPINION NO. 15

COUNTY ATTORNEYS - Obligation to act as counsel for hospital districts;  
HEALTH - Obligation of county attorney to act as counsel for hospital districts;  
MONTANA CODE ANNOTATED - Sections 7-4-2711, 7-4-2717, 7-13-218, 7-34-2101 to 7-34-2164, 7-34-2115, 7-34-2122, 20-1-204, 50-2-115;  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 22 (1985), 40 Op. Att'y Gen. No. 27 (1983).

HELD: A county attorney has no obligation to act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA.

May 23, 1989

John T. Flynn  
Broadwater County Attorney  
Broadwater County Courthouse  
Townsend MT 59644

Dear Mr. Flynn:

You have requested my opinion concerning the following question:

Must a county attorney act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA?

The creation and operation of hospital districts are provided for in sections 7-34-2101 to 2164, MCA. Section 7-34-2115, MCA, provides that a hospital district shall be "governed and managed" by a board of trustees. Section 7-34-2122(1), MCA, provides for the employment and compensation of legal counsel by a hospital district acting by and through its board of trustees.

The obligation of a county attorney to provide legal representation is generally set forth in section 7-4-2711, MCA:

(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.

Section 7-4-2717, MCA, provides county attorneys with the additional obligation of "perform[ing] such other duties as are prescribed by law." The Legislature has specifically enumerated the other types of districts and political subdivisions for which county attorneys are obligated to act as counsel in addition to those set forth in section 7-4-2711, MCA. E.g., § 7-13-218, MCA (refuse disposal districts); § 20-1-204, MCA (school districts and community college districts); § 50-2-115, MCA (county and city-county boards of health). There is no specific statutory provision requiring county attorneys to represent hospital districts, and its absence indicates that they are not obligated to act as counsel for such districts. See also 41 Op. Att'y Gen. No. 22 at 75 (1985), 40 Op. Att'y Gen. No. 27 at 104 (1983).

THEREFORE, IT IS MY OPINION:

A county attorney has no obligation to act as counsel for hospital districts formed pursuant to section 7-34-2101, MCA.

Sincerely,

MARC RACICOT  
Attorney General