

VOLUME NO. 43

OPINION NO. 27

COURTS - Conduct of criminal trials on Sundays;
CRIMINAL LAW AND PROCEDURE - Conduct of criminal trials on Sundays;
JUDGES - Conduct of criminal trials on Sundays;
MONTANA CODE ANNOTATED - Sections 1-1-202(4), 1-1-216(1)(a), 3-1-302,
3-1-302(1), 46-1-201(6).

HELD: Montana law does not permit criminal trials to be conducted on Sundays except to conclude a trial already initiated as specified in section 3-1-302, MCA.

July 24, 1989

Jim Nugent
City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

Does Montana law permit criminal trials to be conducted on Sundays?

Your question is clearly answered by Montana's statutory law. Section 3-1-302, MCA, states in its entirety:

3-1-302. Nonjudicial day. (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

- (a) to give, upon its request, instructions to a jury when deliberating on its verdict;
 - (b) to receive a verdict or discharge a jury;
 - (c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.
- (2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day. [Emphasis supplied.]

Although subsection (1)(c) at first glance suggests that magistrates might be permitted to conduct criminal trials on nonjudicial days, section 1-1-202(4), MCA, read together with section 46-1-201(6), MCA, limits the powers of magistrates to the issuance of arrest warrants.

Section 1-1-216(1)(a), MCA, entitled "Legal holidays and business days" states, in pertinent part:

- (1) The following are legal holidays in the state of Montana:
 - (a) Each Sunday[.] [Emphasis supplied.]

There is no doubt that the conduct of a trial is the essence of "judicial business," as that phrase is used in section 3-1-302(1), MCA. See State v. Lambert, 167 Mont. 406, 538 P.2d 1351 (1975).

THEREFORE, IT IS MY OPINION:

Montana law does not permit criminal trials to be conducted on Sundays except to conclude a trial already initiated as specified in section 3-1-302, MCA.

Sincerely,

MARC RACICOT
Attorney General