

VOLUME NO. 43

OPINION NO. 40

COUNTY ATTORNEYS - Authority to act in proceedings for involuntary commitment of alcoholic;

MONTANA CODE ANNOTATED - Sections 7-4-2711 to 7-4-2717, 53-24-302;

OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 15 (1989), 41 Op. Att'y Gen. No. 22 (1985), 40 Op. Att'y Gen. No. 27 (1983).

- HELD: 1. A county attorney does not have authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA.
2. A county attorney does not have authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA.

October 20, 1989

Mike Salvagni  
Gallatin County Attorney  
Law and Justice Center  
615 South 16th Street  
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion concerning the following questions:

1. Does a county attorney have the authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA?
2. Does a county attorney have the authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA?

Section 53-24-302, MCA, governs the involuntary commitment of alcoholics, and provides in pertinent part:

(1) A person may be committed to the custody of the department by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol.

This provision explicitly lists those parties who may file a petition for commitment of an alcoholic. The list does not include county attorneys. In fact, county attorneys are not mentioned anywhere in the statutory scheme for involuntary commitment of alcoholics. A threshold rule of statutory construction is that where statutory language is clear and unambiguous, the statute speaks for itself and there is no need to engage in further construction. Blake v. State, 44 St. Rptr. 580, 584, 735 P.2d 262, 265 (1987); Yearout v. Rainbow Painting, \_\_\_ Mont. \_\_\_, 719 P.2d 1258, 1259 (1987). The plain and unambiguous language of section 53-24-302, MCA, compels my conclusion that county attorneys are not authorized to file petitions for the involuntary commitment of alcoholics.

Regarding your second question, the Legislature has specifically enumerated the duties of county attorneys in sections 7-4-2711 to 2716, MCA. Those statutes do not authorize a county attorney to provide legal representation in an action for the commitment of an alcoholic. In addition, section 7-4-2717, MCA, directs county attorneys to perform other duties as prescribed by law. However, as previously noted, section 53-24-302, MCA, does not authorize a county attorney to assist or participate in the involuntary commitment of an alcoholic.

In contrast, county attorneys are specifically authorized to file petitions in child abuse, neglect, and dependency proceedings, and to represent the Department of Family Services during the course of those proceedings. Tit. 41, ch. 3, pt. 4, MCA; 42 Op. Att'y Gen. No. 45 (1987). County attorneys also have explicit statutory authorization to file petitions for the involuntary commitment of persons who are seriously mentally ill, § 53-21-121, MCA, and petitions for a finding that a person is incapacitated, § 72-5-315, MCA. The fact that the Legislature has specifically provided authority for county attorneys to act in these proceedings, but has remained silent regarding their authority to act in proceedings for the commitment of alcoholics, indicates that the Legislature did not intend to extend authority to county attorneys to act in proceedings for the commitment of alcoholics. Cf. 40 Op. Att'y Gen. No. 27 at 107 (1983) (the Legislature's specific enumeration of a county

attorney's duties, but its silence on the subject of rural improvement districts, makes clear that the Legislature did not intend that county attorneys have the duty to represent rural improvement districts); 41 Op. Att'y Gen. No. 22 at 77 (1985) (in the absence of a specific statutory mandate, the county attorney is not the legal advisor to a district board of health); 43 Op. Att'y Gen. No. 15 (1989) (fact that Legislature has specifically imposed a duty on county attorneys to legally represent certain political subdivisions, but has remained silent on subject with respect to other political subdivisions, evinces legislative intent that county attorneys may represent a particular political subdivision only when there exists specific statutory authorization providing for that representation).

THEREFORE, IT IS MY OPINION:

1. A county attorney does not have authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA.
2. A county attorney does not have authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA.

Sincerely,

MARC RACICOT  
Attorney General