

## 48 Op. Att'y Gen. No. 16

ATTORNEYS' FEES - Remuneration of indigent youth's legal defense costs;  
COUNTIES - Remuneration of indigent youth's legal defense costs;  
COUNTY COMMISSIONERS - Remuneration of indigent youth's legal defense costs;  
COURTS - Remuneration of indigent youth's legal defense costs;  
JUVENILES - Remuneration of indigent youth's legal defense costs;  
YOUTH COURT ACT - Remuneration of indigent youth's legal defense costs;  
MONTANA CODE ANNOTATED - Sections 41-5-104, -111, -523, -1413, 46-8-101, -201.

HELD: The county commissioners are required to fund the legal defense expenses of an indigent juvenile against whom a petition has been filed in youth court.

June 30, 2000

Mr. Dennis Paxinos  
Yellowstone County Attorney  
P.O. Box 35025  
Billings, MT 59107-5025

Dear Mr. Paxinos:

You have requested my opinion on a question I have rephrased as follows:

Does a county or the state of Montana have the obligation to fund the legal defense expenses of an indigent juvenile against whom a petition has been filed in youth court?

Chapter 329 of the 1974 Montana Laws established the Montana Youth Court Act, now codified at title 41, chapter 5 of the Montana Code Annotated. Mont. Code Ann. § 41-5-1413 codifies a youth's constitutional right to be represented by counsel following the filing of a petition alleging that the youth is either delinquent or in need of intervention. If the parents or guardian and the youth are unable to provide counsel, and the right to counsel has not been properly waived, counsel must be appointed. Mont. Code Ann. § 41-5-1413.

The youth-related statute is similar to the statutes that give indigent criminal defendants the right to counsel in criminal proceedings. See Mont. Code Ann. §§ 46-8-101 and -201. However, remuneration of counsel appointed to represent indigent youths is controlled by Mont. Code Ann. §§ 41-5-104 and -111, not by § 46-8-201.

The Montana Youth Court Act provides that every county commission is "authorized, empowered and required" to provide the funds necessary for the implementation of the Act. Mont. Code Ann. § 41-5-104(1). The expenses that must be covered by the youth court or other appropriate agency include "reasonable compensation for services and related expenses for counsel appointed by the court." Mont. Code Ann. § 41-5-111(2). Thus, it is the responsibility of a county's commissioners, not of the state of Montana, to provide the funds necessary for an indigent youth's legal expenses.

Mont. Code Ann. § 3-5-901 does require the state to fund a number of district court expenses. While that section lists a number of specific expenses the state is required to fund, including the expenses for indigent defense in criminal cases, it does not list the funding of youth court defense expenses as a responsibility of the state. The legislature clearly could have made the funding of youth court expenses a responsibility of the state by including it in Mont. Code Ann. § 3-5-901. The fact that the legislature did not do so supports a conclusion that the legislature did not intend the state to be responsible for the funding of youth court expenses.

In addition, in determining which governmental entity the legislature intended to be responsible for funding the youth court expenses, the specific youth court statutes set forth in Mont. Code Ann. §§ 41-5-104(1) and -111(2) control, rather than the general statute concerning the funding of district court

expenses set forth in Mont. Code Ann. § 3-5-901. See Mont. Code Ann. §§ 1-2-102 and 1-3-225. Mont. Code Ann. § 41-5-104(1) and -111(2) require the county commissioners to provide the funds for an indigent youth's legal expenses in a proceeding in youth court.

THEREFORE, IT IS MY OPINION:

The county commissioners are required to fund the legal defense expenses of an indigent juvenile against whom a petition has been filed in youth court.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/mas/dm