

COUNTY COMMISSIONERS - county to provide facilities for justice court;
 COUNTY COMMISSIONERS - duty to accept and pay actual and necessary clerical expenses of justice court;
 COUNTY OFFICERS AND EMPLOYEES - dispute between board of county commissioners and justice of the peace;
 COURTS, JUSTICE - request for clerical expenses;
 EXPENSES - actual and necessary expenses of justice court;
 JUSTICES OF THE PEACE - determination of actual and necessary clerical expense;
 MONTANA CODE ANNOTATED - Sections 2-18-501 to -503, 3-1-111(5), 3-10-103, (2), -209, 7-6-4005, -4006;
 MONTANA CONSTITUTION - Article VII, section 2;
 MONTANA LAWS OF 1979 - Chapter 528;
 REVISED CODES OF MONTANA - Section 93-412.

HELD: Boards of County Commissioners have a duty to accept and pay claims for actual and necessary clerical expenses associated with the operation of justice court. The procedural rule adopted in State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975) applies to disputes between Justices of the Peace and Boards of County Commissioners regarding payment of actual and necessary expenses.

July 16, 2002

Mr. David G. Rice
 Hill County Attorney
 315 Fourth Street
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Dear Mr. Rice:

You have requested my opinion regarding the budget authority of a Board of County Commissioners and a Justice of the Peace. I have rephrased the question you presented as follows:

When a Board of County Commissioners denies a Justice of the Peace's request for clerical support, which the Justice of the Peace considers to be an actual and necessary expense for conducting court business, what procedure may the Justice of the Peace follow in seeking to compel the Board of County Commissioners to honor the expense?

Mont. Code Ann. § 3-1-111(5), provides that every court has power to "control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every other manner appertaining thereto." Additionally, Mont. Code Ann. § 3-10-103 creates, in relevant part, the following requirements:

3-10-103. County to provide facilities. The board of county commissioners of the county in which the justice of the peace has been elected or appointed:

(1) shall provide for the justice's court:

(a) the office, courtroom, and clerical assistance necessary to enable the justice of the peace and the clerk of justice's court, if any, to conduct business in dignified surroundings;

. . . .

(2) may provide a clerk of justice's court.

As you noted in your opinion request Mont. Code Ann. § 3-10-103(2) gives a Board of County Commissioners the discretion to provide a clerk of justice court. In the dispute you describe in Pondera County, the Justice of the Peace sought to increase the clerk's hours. A Board of County Commissioners' denial of a request to provide a clerk or to increase a clerk's hours after a determination by a Justice of the Peace that either is a necessary expense, is subject to the review process established in State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975).

In Browman, the Montana Supreme Court considered a dispute between a Justice of the Peace and a Board of County Commissioners. Due to an increase in the caseload, the Justice of the Peace submitted a request to hire temporary clerical assistance. Id. at 343, 543 P.2d at 186. Extra clerical assistance had not been provided in the Justice of the Peace's annual budget. Id. The Board of County Commissioners disapproved the request, in part, based on their position that the additional help was unnecessary. Id. The case came before the Supreme Court after a district court judge issued a peremptory writ of mandate requiring the Board of County Commissioners to allow and pay the claim. Id. at 344, 543 P.2d at 186.

On appeal the Board of County Commissioners argued that the law vested in them the discretion to approve or disapprove the claim for clerical expenses, rather than imposing a duty on them to act. Browman, 168 Mont. at 345, 543 P.2d at 187. The Court rejected the Board of County Commissioners' claim noting that it failed "to recognize the constitutional and statutory provisions that enable justice courts to incur the actual expenses necessary to function properly as a court of law." Id. The Court held that those constitutional and statutory provisions created a duty on the part of the commissioners to approve and pay the actual and necessary expenses of a justice court. Id.

The Court determined that the Board of County Commissioners' statutory duty to pay clerical expenses arose out of R.C.M. 93-412, which is now codified at Mont. Code Ann. §§ 3-10-103

and 3-10-209. Browman, 168 Mont. at 345-346, 543 P.2d at 188-189. Because the Court recognized that conflicts between Boards of County Commissioners and Justices of the Peace were bound to occur, it exercised its supervisory power under Mont. Const. article VII, § 2, and adopted a rule to govern such situations.

The Court's adopted rule governs in the case of conflict between a Board of County Commissioners and a Justice of the Peace concerning the funding of court expenses. According to the rule, the Justice of the Peace must submit a claim to the senior district judge of the judicial district in which the county is located in which the Justice of the Peace serves. Browman, 168 Mont. at 346, 543 P.2d at 189. The senior district judge is required to certify the necessity of the expense within ten (10) days of the submission of the claim and to transmit the certification to the Board of County Commissioners with copy to the county attorney. Id. If the senior district judge fails, refuses or neglects to certify the claim within the ten (10) day period, such nonaction is deemed to be a refusal to certify that such claim is an actual and necessary expense incurred or to be incurred by the Justice of the Peace in the performance of the Justice's official duties. Id. The Court held that the senior district judge's certification or refusal to certify such a claim was a condition precedent to any legal action on the claim in any court of this state. Id.

You state in your opinion request that some Boards of County Commissioners contend that the legislature disapproved the rule from Browman, citing the 1979 amendment to Mont. Code Ann. § 3-10-209 to support their contention. Senate Bill 481, enacted as chapter 528, Laws of 1979, amended § 3-10-209 by substituting the phrase "actual and necessary travel expenses" for what had previously simply read "expenses." I do not agree with the argument that the legislature's passage of Senate Bill 481 resulted in a disapproval of the Browman rule. First, review of Senate Bill 481 does not support the argument that the Legislature intended to disapprove Browman. The title of Senate Bill 481 reveals that its purpose was to standardize travel expenses and per diem for justices, judges, and court reporters as provided for in Mont. Code Ann. §§ 2-18-501 through 2-18-503. 1979 Mont. Laws, ch. 528. The Browman rule is not mentioned in the title or the text of the Bill. Id. Senate Bill 481 does not reflect any intent on the part of the legislature to disapprove the rule. Rules of procedure promulgated by the Montana Supreme Court pursuant to Mont. Const. article VII, § 2, are subject to disapproval by the legislature in either of the two sessions following promulgation. It is logical to conclude that any such disapproval of a judicial rule of procedure must be done expressly. Passage of Senate Bill 481 does not support the contention that the legislature disapproved the Browman rule.

Second, in my opinion, the duty to pay for clerical assistance arises out of Mont. Code Ann. § 3-10-103, which allows a Board

of County Commissioners to provide a clerk, rather than Mont. Code Ann. § 3-10-209, which addresses travel expenses. Thus, the 1979 amendment of Mont. Code Ann. § 3-10-209 is not directly applicable to a dispute over clerical expenses. Finally, subsequent to the 1979 amendment of Mont. Code Ann. § 3-10-209, the Montana Supreme Court continued to apply the Browman rule in cases involving financial disputes between a justice of the peace and a board of county commissioners. See, e.g., In the Matter of Certain Justice Court Expenses, 264 Mont. 510, 872 P.2d 795 (1994); Clark v. Dussault, 265 Mont. 479, 878 P.2d 239 (1994). This fact further supports my conclusion that the legislature did not disapprove the Browman rule with its adoption of Senate Bill 481.

It is therefore my opinion that Mont. Code Ann. § 3-10-103 creates a duty on the part of Boards of County Commissioners to accept and pay claims for actual and necessary clerical expenses associated with the operation of justice court. The procedural rule adopted in State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975), applies to disputes between Justices of the Peace and Boards of County Commissioners regarding payment of actual and necessary expenses. In the dispute you described in Pondera County, the Justice of the Peace properly followed Browman, and her request was certified by the district court as a necessary expense.

The statutes governing county accounting, budgeting, and financial matters do not preclude continued application of the Browman rule. While boards of county commissioners may have some budgetary discretion when considering the payment of actual and necessary court expenses, the statutes governing the county budgeting process do not serve to disapprove application of the Browman rule when disputes arise. See Mont. Code Ann. §§ 7-6-4005 and 7-6-4006.

THEREFORE, IT IS MY OPINION:

Boards of County Commissioners have a duty to accept and pay claims for actual and necessary clerical expenses associated with the operation of justice court. The procedural rule adopted in State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975), applies to disputes between Justices of the Peace and Boards of County Commissioners regarding payment of actual and necessary expenses.

Very truly yours,

MIKE McGRATH
Attorney General

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