

ATTORNEYS' FEES - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;

COUNTIES - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;

COURTS - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;

COURTS, JUSTICE - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;

MONTANA CODE ANNOTATED - Sections 3-5-901, (1), (2), (3), (4), (4)(a), (i), (ii), (A), (B), (2001), (2002), 46-8-201, (2001), (2002).

HELD: Mont Code Ann. § 3-5-901(4) specifically limits state payment of costs for court-appointed counsel for indigent criminal defendants to district court criminal cases.

September 11, 2002

Mr. Gary Ryder  
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You have requested my opinion concerning the following question:

Does a county or the State of Montana have the obligation to fund the legal defense expenses of an indigent individual in justice court?

The 2001 legislature substantially revised the manner in which district courts are funded to provide for state government assumption of most of the costs. The legislation, effective July 1, 2002, did not revise the funding for justice court. See Mont. Code Ann. § 3-5-901.

Mont. Code Ann. § 46-8-201, also effective July 1, 2002, regarding remuneration of court appointed counsel, provides:

Remuneration of appointed counsel.

(1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) **must be paid by the state as provided in 3-5-901**, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

Mont. Code Ann. § 46-8-201 (2001) (emphasis supplied).

Mont. Code Ann. § 3-5-901 (2001) governs the state assumption of district court expenses. Subsection 1 specifically lists the district court costs that the state shall fund. Mont. Code Ann. § 3-5-901(1). Subsection 2 of the statute describes the costs that the state will not fund. Mont. Code Ann. § 3-5-901(2). Neither of these subsections addresses the issue of court-appointed counsel. Subsection 3 specifically adds the expenses related to the appellate defender program, involuntary commitment proceedings, and youth court proceedings to the list of costs that the state will assume. Mont. Code Ann. § 3-5-901(3). Finally, subsection 4 specifically addresses the issue of court-appointed counsel.

4(a) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties:

(i) in **district court criminal cases only**, expenses for indigent defense; and

(ii) in proceedings under subsection (1)(e):

(A) expenses for appointed counsel for the youth; and

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(B) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth.

Mont. Code Ann. § 3-5-901(4) (emphasis supplied).

The new legislation did not address state funding for other court's expenses. Statutes must be construed or interpreted in accordance with the intent of the legislature. State v. Christensen, 265 Mont. 374, 376, 877 P.2d 468, 469 (1994). In construing a statute, I must look first to the plain meaning of the words of the statute; if the language is clear and unambiguous, no further interpretation is necessary. Id. Another fundamental rule of statutory interpretation requires that all statutes concerning a subject be read together, with each given effect, if reasonably possible. Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1977).

Mont. Code Ann. § 46-8-210 explicitly states that the cost of remuneration for appointed counsel will be paid by the state in accordance with Mont. Code Ann. § 3-5-901. That statute specifically limits that payment to district court criminal cases only. The statutory language of these statutes when read together is clear and unambiguous. Nothing in the language indicates that the legislature intended to include the costs associated with indigent defendants in justice courts.

THEREFORE, IT IS MY OPINION:

Mont Code Ann. § 3-5-901(4) specifically limits state payment of costs for court-appointed counsel for indigent criminal defendants to district court criminal cases.

Very truly yours,

MIKE McGRATH  
Attorney General

mm/pdb/jym