

**Prisoner, Entitled to Witness Fees.    Witness Fees, Prisoner  
Entitled To.**

A prisoner serving a jail sentence is entitled to witness fees in a criminal case.

Helena, Montana, July 31, 1907.

C. A. Tuttle, Esq.,  
Chairman, Board of County Commissioners,  
Anaconda, Montana.

Dear Sir:—

Your letter of the 30th inst., requesting an opinion of this office on the following question, received:

“Is a prisoner in the county jail, serving a jail sentence, entitled to draw his per diem as a witness in a criminal case in the same county in which he is confined in jail?”

Section 4648 of the Political Code provides for witness fees in criminal actions, and the only exceptions contained therein are officers of the United States, State of Montana, and of counties, incorporated cities and towns within the State.

The fact that a man is serving out a sentence imposed upon him for a violation of the law would not deprive him of his right to witness fees in a criminal action, as by serving out the sentence he is supposed to have fully paid the penalty for the violation of the law.

In the absence of a statute to that effect, to deprive him of witness fee, would in effect be imposing upon him an additional penalty to that already imposed by the court.

You are therefore advised that the county attorney's opinion to you correctly construes the law.

Very truly yours,

ALBERT J. GALEN,

Attorney General.