

**Prisoner, Entitled to Witness Fees Only When Testifying.
Witness Fees, Prisoner Entitled to When He Actually Testifies.**

A prisoner serving a jail sentence is not entitled to witness fees in a criminal case, except for the day or days that he

actually appears in court and gives testimony. At other times he is in attendance at the jail and not at the court.

Helena, Montana, Aug. 7, 1907.

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

Dear Sir:—

Your letter of August 5th, regarding the opinion given to you by this office on July 31st, 1907, received.

In your letter you state additional facts to those in the letter upon which the opinion was given, from which it appears that some of the prisoners confined in the county jail were witnesses in a criminal case prosecuted in the county, and are now demanding witness fees for twelve to eighteen days, although they did not actually appear in court and testify on that number of days.

In the opinion given to you on July 31st, we intended to hold only that the prisoners confined in the county jail were entitled to witness fees for the day or days that they actually appeared in court and testified. Any day upon which the witnesses were not taken to the court and there testified should be excluded for the reason that the witnesses were confined in jail and not in attendance upon the court, and not taken away from their regular business or employment as are other witnesses not confined in the county jail, who are in attendance upon the court waiting to be called to the stand.

Very truly yours,
ALBERT J. GALEN,
Attorney General.