

Witness Fees, in Criminal Cases. Criminal Cases, Witness Fees in. Fees, of Witness in Criminal Cases.

A witness in a criminal case, who is called in a second criminal case the same day, is not entitled to per diem for the second case, as the witness fees paid in the first case cover his compensation for the entire day.

Helena, Montana, June 9, 1909.

Hon. H. S. Hepner,
County Attorney,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of June 8, 1909, wherein you submit for my official opinion the following question:

Is a witness in a criminal proceeding, serving as such in more than one case tried on any one day, entitled to separate witness fees in each case in which he may be called?

It is my opinion that a witness in a criminal case, receiving per diem for one day, cannot receive additional per diem in another criminal case, where he is called the same day.

Section 3182, revised codes, provides especially:

"That no witness shall receive fees in any more than one criminal case on the same day."

This rule applies to courts of record.

Section 3187, to which you refer, applies to courts not of record, but it also provides that the witness fee of \$1.50 shall be in compensation for the witnesses attendance per day.

These two sections of the code seem to me to be conclusive. You are therefore advised that the county is liable for but a single fee.

The same question is considered in an opinion given by me to Honorable S. P. Wilson, county attorney, on March 13, 1908, and reported at page 244 of the official opinions of attorney general, 1906-08. The question there considered is as to whether a juror on the regular panel is entitled to witness fees in a criminal case, when called as a witness therein.

Very truly yours,

ALBERT J. GALEN.

Attorney General.