

Costs, Deductions from Fines in Criminal Cases. Criminal Cases, Deduction of Costs from Fine in. Fines and Forfeitures, Deductions of Costs From. Jury, Mileage and Per Diem of not Properly Costs.

In criminal cases where a fine is imposed, mileage and per diem of witnesses and sheriff's costs should be deducted by the clerk of the court, and the balance paid to the County Treasurer. The costs, mileage and per diem of jurors in criminal cases is not part of the costs to be deducted.

Helena, Montana, November 11, 1909.

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

Dear Sir:

I am in receipt of your letter of November 10, wherein you ask my opinion as to what costs the clerk of the district court should deduct from a fine imposed in a criminal case.

Section 9715 provides that all fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such payment the residue shall be paid to the county treasurer. Nowhere in the statute do we find an enumeration of what constitutes costs in criminal cases.

Section 7169, however, enumerates what properly constitutes costs

in civil cases. They include the per diem and mileage of witnesses, the costs of the sheriff provided for by statute, and other items which could have no application to criminal proceedings.

The general rule seems to be that in the absence of express statute that the per diem and mileage of jurors is not a proper item of costs. This is based upon the theory that in criminal cases the defendant is entitled to a jury trial, and under that guarantee it would be unfair to make him pay therefor.

The supreme court of Michigan, 25 N. W. page 320, holds this view. This seems to be the general rule, as laid down in Cyc., Vol. XI., page 279.

You are, therefore, advised that the only costs which should be deducted are the mileage and per diem of witnesses and the costs incurred by the sheriff.

Yours very truly,

ALBERT J. GALEN,

Attorney General.