

**Witness Fees, Entitled to. Fees, of Witnesses.**

A witness attending a criminal trial is entitled to \$3.00 per day for each day he attends as such, and to ten cents for each mile, each way, traveled by him.

Section 9489, R. C. may be considered as being applicable in certain instances to modify the effect of the foregoing rule.

February 21, 1916.

Hon. H. A. Bolinger,  
County Attorney,  
Bozeman, Montana.

Dear Sir:

I am in receipt of your recent letter requesting an opinion as to what fees witnesses are entitled to receive who attend the District Court from places outside of Gallatin County?

Section 3182, Revised Codes of 1907, provides that:

Witnesses "attending in any civil or criminal action or proceedings before any court of record \* \* \* for each day \$3, for milage and traveling to the place of trial or hearing each way for each mile ten cents".

In *McGlaufflin v. Wormser*, 28 Mont. 177, it is pointed out that under Article VIII, Section 11 of the Constitution, provision is made that the process of District Courts shall extend to all parts of the state, and under the Code the process by which the attendance of witnesses is required is by subpoena. It will be noted that by the terms of Section 3182, above, the language used is general and is not confined in its operation to witnesses subpoenaed within the county where trial is had. This section was enacted by the Fourth Legislative Assembly, being a part of an Act approved March 2nd, 1895. Section 9489, Revised Codes is an original Code section, and it provides that:

"When a person attends before a magistrate, grand jury or court as a witness in a criminal case upon a subpoena, or in pursuance of an undertaking, and it appears that he has come from a place outside the county \* \* \* the Judge at his discretion by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness."

The language of this section is in direct conflict with that of Section 3182 above referred to. Section 3565, Revised Codes, provides as follows:

"That if any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with, any act or acts passed by the fourth legislative assembly of the State of Montana, the acts or parts of acts passed by the fourth legislative assembly shall be considered and construed as repealing such acts or parts of acts herein enumerated."

It must be held, therefore, that the provisions of Section 3182, act as a limitation upon the terms of Section 9489 to the extent of limiting the amount which any witness may receive to \$3 per day while in actual attendance as a witness, and ten cents a mile each way for each mile actually traveled. Section 9489 may, however, be considered as being in full force and effect so as to authorize the court to allow reasonable sums for expenses of witnesses who may be called from points without the State, for the reason that the process of the court not being extra territorial in its nature, a person from without the state whose presence might be desired as a witness in a cause, would be in a position to impose conditions, in which event it is believed

the court would be empowered to make a reasonable allowance for the necessary expenses of such witness.

The conclusion, therefore, is that while actually attending as a witness in a criminal action, the fee is fixed by law at \$3 per day, and in addition the witness receives as mileage ten cents per mile for each mile each way.

Yours very truly,

J. B. POINDEXTER,

Attorney General.