

**Police Judge—Justice of Peace—Fees of Police Judge
and Justice of Peace in Criminal Cases.**

One who holds the office of Police Judge and also the office of Justice of the Peace, is entitled to the regular fees prescribed by statute for services as Justice of the Peace.

Sept. 17th, 1918.

Mr. T. H. McDonald,
County Attorney,
Kalispell, Montana.

Dear Sir:

I have your letter of Sept. 13th requesting the opinion of this office as to whether or not one who has been regularly elected police judge and who is also the regularly elected justice of peace is entitled to draw pay from the county in criminal cases, and calling my attention to the provisions of Section 3241 of the Revised Codes of 1907.

I am of the opinion that when one holds the office of police

judge and also the office of justice of the peace, he is entitled to the regular fees prescribed by statute for services as justice of the peace. The language of Section 3241 "in all criminal actions or proceedings arising under the criminal laws of the state when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever," refers in my opinion to those cases arising under the criminal law in which a police judge has concurrent jurisdiction with a justice of the peace, and which might therefore be properly tried before a police judge acting as a justice of the peace. The fact that a person is a duly elected and qualified justice of the peace should entitle him to the regular fees prescribed by law, and he should not be debarred from collecting the same by reason of the fact that he also holds the office of police magistrate.

The case of *State ex rel. Rowe vs. District Court*, 44 Mont. 318, might at first examination seem to announce a different rule than that herein stated. It should be observed, however, that the *Rowe* case was one in which a person who held the office of police judge attempted to charge for services performed while acting as a justice of the peace, the fact being that he was not a regularly elected justice of the peace, but was merely acting as such in those cases in which the law gave him concurrent jurisdiction. The *Rowe* case is therefore not in point considering the question presented in your letter.

Respectfully,

S. C. FORD,
Attorney General.