

**Prisoners—Witness Fees—Mileage.**

A prisoner confined in the state penitentiary and returned to a county as a witness in a criminal case is entitled to witness fees but not mileage where he is returned at the expense of the county.

Harry L. Burns, Esq.,  
County Attorney,  
Chinook, Montana.

April 17, 1929.

My dear Mr. Burns:

You have requested my opinion whether a prisoner confined in the penitentiary at Deer Lodge and returned to Blaine county as a witness in a criminal action on behalf of the state is entitled to and may collect per diem and mileage.

In an opinion of former Attorney General Galen, Volume 2, Page 150, Opinions of Attorney General, it was held that a prisoner confined in a county jail was entitled to witness fees, and I think the conclusions drawn in that opinion are equally applicable to a prisoner confined in the state penitentiary.

It is therefore my opinion that the witness in question is entitled to witness fees. However, I assume that the prisoner was returned to Blaine county at the county's expense, and, if so, he would not be entitled to mileage for the reason that he was not put to any expense in traveling to and from the place of trial and mileage has already been paid by the county.

Very truly yours,  
L. A. FOOT,  
Attorney General.  
By S. R. Foot, Assistant.