

**Officers—Offices—Constables—Policemen—Witnesses—
Per Diem—Criminal Proceedings.**

Neither a police officer, nor a constable who is also a policeman, nor a county health officer is entitled to be paid per diem as a witness for testifying as a witness in a criminal proceeding.

Mr. J. B. Christopherson,
Clerk of Court,
Glasgow, Montana.

March 10, 1931.

My dear Mr. Christopherson:

The opinion of this office has been requested upon the following question:

“Is a person who is a constable and a policeman of the city of Glasgow, and another who is county health officer of Valley county, Montana, entitled to be paid per diem as a witness in a criminal proceeding?”

Section 4936, R. C. M. 1921, provides:

“No officer of the United States, the State of Montana, or of any county, incorporated city or town within the limits of the State of Montana shall receive per diem when testifying in a criminal proceeding * * *.”

In my opinion, a police officer of the city of Glasgow is an officer of that city within the meaning of the above mentioned statute. A police officer has uniformly been held to be an officer of the city within the meaning of various statutes by different courts in the United States and our own supreme court in the case of *State vs. Mayor of Butte*, 54 Mont. 533, 172 Pac. 134 has held that a police officer is an officer of the city within the view of the statute which prohibits such an officer from buying and selling warrants. I can see no reason why the same person would not be a city officer within the meaning of section 4936, supra.

It is also my opinion that a county health officer is a county officer within the meaning of said section 4936. Physicians who are authorized by statute to perform services for counties have been held to be county officers. (*People vs. Harrington*, 63 Cal. 257.) I think this would be especially true under our law where the physician who is appointed county health officer is directly required by statute to perform certain services therein mentioned. Our laws seem to place him in the class of “officers” as they are defined in the case of *State ex rel. Barney vs. Hawkins*, 79 Mont. 506, 257 Pac. 411, and I do not believe that a county health officer could, under that decision, be classified as an employee.

It is therefore my opinion that neither the police officer nor the county health officer should be paid per diem for testifying in a criminal proceeding.

Very truly yours,

L. A. FOOT,

Attorney General.