

No. 290

## JURORS—RECESS—COMPENSATION

Held: Jurors not entitled to compensation for period of recess.

Mr. John M. Comfort  
County Attorney  
Madison County  
Virginia City, Montana

November 10, 1941.

Dear Mr. Comfort:

You have requested my opinion as to payment of jurors who, during a jury term, are excused from attendance until a later date in the term.

The right to compensation may not be conferred by implication. (*Johnston v. Lewis and Clarke County*, 2 Mont. 159.) The person seeking it must point to the particular statute entitling him to receive the compensation claimed. (*Brannin v. Sweet Grass County*, 88 Mont. 412, 293 Pac. 970.)

Section 4933 of the Revised Codes of Montana, 1935, allows grand and trial jurors four dollars (\$4.00) per day for attendance before any court of record.

The controlling statute affecting the question here is Section 4934 of the Revised Codes of Montana, 1935, which provides:

"A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must be paid for all Sundays and legal holidays unless he resides within ten miles from the courthouse, and all jurors residing within ten miles from the courthouse at which he is summoned to appear shall receive no compensation for Sundays or legal holidays, or for any days he may have been absent or excused from attending court."

Under the foregoing statute, jurors residing within ten miles of the courthouse are not entitled to compensation for days on which they are absent or excused from attending court. All jurors must be paid for each day of attendance. It follows that jurors residing more than ten miles from the courthouse, although expressly entitled to compensation for Sundays and legal holidays, may not draw compensation for days they do not attend by reason of being excused.

The same result has been reached in *Haber v. McClain* (Tex.), 186 S. W. 871, and *In re Snow* (Me.), 149 A. 808.

I conclude, therefore, jurors may not receive compensation for the periods of time they are excused from service as heretofore pointed out.

Sincerely yours,

JOHN W. BONNER  
Attorney General