

Opinion No. 146.

**Witness Fees—Fees, Witness—Jurors’
Per Diem—Per Diem, Jurors’.**

Held: Public officers are not precluded from receiving jurors’ per diem by virtue of their public offices. Justices of the peace are entitled to receive witnesses’ fees in criminal cases as they are not such officers as are prohibited by statute.

April 25, 1946.

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

You have requested my opinion concerning the payment of juror’s per diem

to the sheriff, undersheriff and Director of U. S. Employment Office, all of whom are paid by the county.

You also asked concerning the payment of witness fees in a criminal case to a justice of the peace who is not on a fixed salary, but receives remuneration for his services from the fees paid into his office.

Your question concerning the payment of juror's per diem is answered by Section 4933, Revised Codes of Montana, 1935, as amended by Chapter 9, Laws of 1945, which reads:

"Grand and trial jurors shall receive Six Dollars per day for attendance before any court of record and Five Cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage."

There is nothing in the above quoted section which precludes officers such as you enumerated from receiving per diem as jurors, and the payment is to be distinguished from the question concerning the payment of fees to officials as witnesses in criminal cases. (See page 176, Volume 12, Report and Official Opinions of the Attorney General.)

It is to be noted the legislature, by the amendment, has given a discretionary power to the court in the payment of per diem to jurors who are excused on their own motion or who are called as special jurors and not sworn in.

Your second question is answered by Section 4936, Revised Codes of Montana, 1935, which provides:

"For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, three dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, seven cents; provided, however, that 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 any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day."

The foregoing, in prohibiting the payment of witness fees to the enumerated officers in criminal cases, does not include township officers. Section 4725, Revised Codes of Montana, 1935, enumerates the officers of a county which do not include justices of the peace. Section 4726, Revised Codes of Montana, 1935, provides that justices of the peace are township officers. It is immaterial whether the justice of the peace receives a fixed salary or not as to whether he is entitled to a witness fee. A justice of the peace, because of the fact that he is a township officer, is entitled to a witness fee in a criminal case.

It is therefore my opinion public officers are not precluded from receiving jurors' per diem by virtue of their public offices.

It is also my opinion justices of the peace are entitled to receive witnesses' fees in criminal cases, as they are not such officers as are prohibited by statutes.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General