

Opinion No. 93

Jurors Fees—Grand Jury—Attendance—District Courts

Held: Grand jurors are entitled to pay for every day of attendance. If the court determines that the grand jury has been in attendance upon it on Saturdays, the jurors are entitled to be paid for Saturdays in the same manner as for any other day of attendance.

February 28th, 1950.

Mr. Melvin E. Magnuson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Magnuson:

You have requested my opinion on the following question:

May a grand juror, serving and sitting as a member of a grand jury, duly and regularly empaneled and sworn, and duly and regularly performing the duties required of it by law, receive compensation for each Saturday during which said grand jury has been and is convened? If so, under what conditions may said grand juror receive such compensation?

Section 25-401, Revised Codes of Montana, 1947 (Section 4933, Revised Codes of Montana, 1935, as amended) govern jurors fees, and reads as follows:

"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."

This section applies specifically to grand as well as trial jurors.

Section 25-402, Revised Codes of Montana, 1947 (Section 4934, Revised Codes of Montana, 1935) governs the period of time for which the jurors must be paid. That section states:

"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 the court."

The statutes are unequivocal. Under them a juror must be paid for each day's attendance. He cannot be paid for Sundays and holidays, however, unless he resides more than ten miles from the courthouse.

Chapter 108, Montana Sessions Laws, 1949, permits county offices to be closed at noon Saturdays, except when the business of the offices requires them to be kept open. However, this act does not make Saturday a holiday.

The sole test is a factual one, that is, whether or not the juror has been in attendance upon the court on any day.

A juror is not entitled to pay during a period of recess. (Opinion 290, Volume 19, Opinions of Attorney General).

The grand jury is called by the District Court at the discretion of the District Judge (Article III, Section 8, Constitution of the State of Montana) when such Judge considers it necessary (Section 93-1801, Revised Codes of Montana, 1947, Section 8918, Revised Codes of Montana, 1935; Section 94-6301, Revised Codes of Montana, 1947, Section 11806, Revised Codes of Montana, 1935).

The grand jury is a secret, deliberative assembly, a branch of the court, summoned by the court to attend before the court. The fact of

attendance then, is a matter peculiarly within the knowledge of the court which has convened it.

It is therefore my opinion that the statutes governing the question are clearly to the effect that pay is not only permissible but mandatory for every day of attendance excepting Sundays and holidays. It is further my opinion that the fact of attendance is a matter within the knowledge of the District Court. If the court determines that the grand jury has been in attendance upon it on Saturdays, the jurors are entitled to be paid for Saturdays in the same manner as for any other day of attendance.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.