

**Opinion No. 81**

**Cities and Towns — Jurors —  
Compensation of Jurors  
Police Courts**

HELD: 1. Parties to actions in  
police courts are entitled to have a  
jury trial.

2. Jurors serving in a police court shall receive \$3.00 per day in accordance with the provisions of Section 25-403, R.C.M., 1947.

September 24, 1956

Mr. R. E. Towle  
State Examiner  
State Capitol Building  
Helena, Montana

Dear Mr. Towle:

You have requested my official opinion in answer to the following questions:

1. Is there a provision under Montana statutes providing for a jury trial in a police court?
2. Is it legal for a city in Montana to make payments of fees to jurors hearing cases in a police court?

In answering your first question attention should be given to Title 11, Chapter 16, of the Revised Codes of Montana, 1947. Section 11-1606 of that chapter states as follows:

"Proceedings In Criminal Actions. Proceedings in police courts in criminal actions triable in such courts are regulated by sections 94-100-1 to 94-100-46."

Section 94-100-11, R.C.M., 1947, states that:

"The defendant is entitled to a jury of six qualified persons, but may consent to a less number."

It is therefore my opinion that a defendant appearing before a police court in a criminal action is entitled to a jury trial.

Section 11-1607, R.C.M., 1947 states that:

"Proceedings In Civil Actions. The Proceedings of the police court in civil actions are regulated by sections 93-7801 to 93-7804 of the code."

Section 93-7804, R.C.M., 1947, provides that:

"Proceedings To Be Conducted As In Justices' Courts. All proceedings in civil actions in police courts must, except as in this chapter otherwise provided, be conducted in the same manner as civil actions in justices' courts."

Section 93-7206, R.C.M., 1947, provides ample evidence of the legislative intent that defendants in civil actions are entitled to trial by jury. Further evidence of this right to trial by jury is set forth in Article III, Section 23 of our Montana Constitution.

It is therefore my opinion that parties to a civil action in a police court are entitled to a jury trial.

In answer to question number two, Montana law specifically provides for compensation for jurors in "courts not of record." Section 25-403, R.C.M., 1947, provides as follows:

"Jurors in courts not of record, in both civil and criminal actions, shall receive three dollars (\$3.00) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of three dollars (\$3.00) per day."

It is therefore my opinion that jurors in police courts shall receive \$3.00 per day in accordance with the provisions of Section 25-403, R.C.M., 1947.

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