

Opinion No. 34**Jurors—Fees—Mileage—Sections 25-401 and 25-402, Revised Codes of Montana, 1947**

Held: A juror cannot be compensated for any period he has been excused from attendance upon the court.

A juror may receive mileage for each way to and from the county seat to his residence for each trip made necessary by his attendance upon the court.

October 15, 1957

Mr. John C. Harrison
Lewis & Clark County Attorney
Helena, Montana

Dear Mr. Harrison:

You ask these two questions regarding jurors:

1. Can a juror be compensated who has been excused for a definite period?
2. Can a juror receive mileage for every day he must travel while in attendance upon the court?

Your first question was answered in some measure by Opinion 290, 19 Opinions of the Attorney General. I furnish this further opinion to amplify the former one and to remove any doubt of its pertinence to your inquiry.

Two statutes bear on your first question.

The first, Section 25-401, RCM, 1947, provides in part that the rate of compensation for a trial juror shall be by the day for attendance upon the court.

The second, Section 25-402, RCM, 1947, 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 the court."

It is plain from these two sections that the juror is compensated by the day, provided he is in attendance upon the court.

Our problem, then, is to determine what is meant by being in attendance upon the court.

A good definition is found in the Washington case of *State ex rel. Hastie v. Lamping*, 25 Wash. 278, 65 Pac. 537, 538, where the court said:

"We do not think it can be said that a juror is in attendance on a court of record on a day when he is not subject to the call of the court, but is by order of the court, entirely relieved from the performance of his duty in this respect."

Further, in the same opinion and upon the same question, the court said:

"Jury duty might be imposed and is in some jurisdictions without compensation at all, and construing the statute in this instance as we would in any other, we are unable to conclude that it has application beyond the actual physical attendance of the juror on a court of record."

In the same vein is *Vinett v. Jordan*, 111 Iowa, 409, 82 N. W. 953.

The legislature may withhold or grant compensation to jurors as it sees fit.

"Jury service being a civic duty there is no right to compensation for such service in the absence of statute." (51 Am. Jur., Jury § 57.)

"The right of compensation for services as a juror is purely statutory, and it is for the legislature to determine in what cases such compensation shall be made, as well as the amount and mode of payment, or it may withhold any thereof." (*Hilton v. Curry*, 124 Cal. 84, 56 Pac. 784.)

In *Mason v. Culbert*, 41 P. 444, 108 Cal. 247, the court aptly stated:

"After he has been drawn he may be excused for a definite period, and after a jury has been impaneled the remaining jurors may be excused until some future day. In such cases they are not in 'attendance' upon the court during any period that they are excused therefrom with the opportunity to be engaged in ordinary vocations."

Nothing has been found challenging these authorities on this point. A juror is not in attendance during any period he has been excused.

Regarding your second question on travel allowance, Section 25-401, RCM, 1947, provides in part that the juror shall receive "five cents per mile each way for traveling from and to their residence and county seat."

The statute places no limitation upon the number of trips the juror may be compensated for. It merely says for each way. No other statute enacted in connection with it indicates that a limitation is necessary. Particularly, Section 25-405, RCM, 1947, which requires the clerk to compute and record the amount due for mileage contains no hint that a limitation is necessary.

The juror who is obliged to travel to and from his residence to the county seat received no greater compensation than the juror who resides within the county seat. The travel allowance plainly is to reimburse him for the greater expense he must go to. If he travels back and forth each day he is put to that expense each day and should be compensated. To hold that he may receive the allowance once a term or once a week is to read language into the statute, and that is forbidden. Section 93-401-15, RCM, 1947, provides:

"In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

For these reasons I believe that although the legislature could have restricted the number of compensable trips to any certain period they did not do so, and therefore, the juror may receive mileage for each day each way he travels.

It is therefore my opinion that a juror cannot be compensated for any period he has been excused from attendance upon the court.

It is also my opinion that a juror may receive mileage for each way to and from the county seat to his residence for each trip made necessary by his attendance upon the court.

Very truly yours,
FORREST H. ANDERSON
Attorney General