

OPINION
56-137

June 13, 1956(OPINION)

WITNESSES

RE: Fees - Are Law Enforcement Officials Entitled to Fees for Testifying in Criminal Cases

We acknowledge receipt of your request of June 8, 1956, for an opinion as to whether or not highway patrolmen, policemen and deputy sheriffs are allowed witness fees for testifying in a criminal case.

An opinion issued from the Attorney General's office on February 7, 1948, stated that "The patrolmen in performing the duties indicated is simply performing the duties of his office and for which he is paid a salary. No officer is entitled to a fee for performing official duties unless the statute specifically provides for the payment of the fee to him. We know of no such provision. . . . The highway patrolmen are peace officers. It is their duty when they see a highway regulation violated to make an arrest and take the person arrested before the nearest justice and make a complaint. They certainly are not entitled to witness fees nor any other fees for this performance of their duty."

A subsequent opinion issued from this office of September 13, 1948, stated that "When the policeman is acting as a police officer of the state in the matter of enforcing state law instead of a city ordinance, he would, in my opinion, be entitled to the same fees as prescribed by law for the sheriff when performing like services. These fees are fixed by section 11-1507 of the 1943 N.D.R.C." This latter opinion further stated that "If it becomes necessary for the policeman to appear in either the justice or district court to testify in any criminal prosecution under the state law, he would, in my opinion, be entitled to the same fees as any state witness would be entitled to under like circumstances."

Even though the two above opinions are concerned with slightly different problems, they are contradictory in principle. The subsequent opinion contends that there is a distinction between policemen acting under the authority of city ordinance and policemen acting under the authority of state law. City policemen are peace officers of the state at all times, as well as peace officers of the city, and as such the above distinction is discontinued as invalid.

Highway patrolmen are also peace officers of the state, and being such, they are not due witness fees for testifying in criminal cases. A state highway patrolman, or any other peace officer of the state is not entitled to witness fees in a criminal case, in the absence of statute providing for such fees. These peace officers are on a salary paid by the state and by receiving their salary they owe a duty of their position and to the state to testify without any compensation in a criminal case. This duty to testify in a criminal case without compensation as witnesses, is a part of their duty to enforce the laws of the state and bring before the magistrate all violators of such state laws.

Under 11-1507 of the 1954 N.D.R.C., fees are specified for the different duties of a sheriff or his deputies to receive witness fees for testifying in a criminal case.

Since there are no provisions allowing witness fees for peace officers in the 1943 N.D.R.C., and since highway patrolmen, policemen and sheriffs and his deputies are peace officers, no witness fees are allowed.

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