



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

June 25, 1975

Opinion No. 75-266

Mr. Philip E. Winter
Assistant Lyon County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Dear Mr. Winter:

K.S.A. 1974 Supp. 28-126 states thus:

"No person holding any office or appointment under any county, city or other municipality shall be paid any witness fees in any case whatsoever when such person is a witness for the state of Kansas, county, city or other municipality when such state, county, city or other municipality is a party to said suit; nor shall any sheriff or his undersheriff or deputies, while attending court as an officer, claim or be paid any witness fees in such cases: *Provided*, That this act shall not apply where such witness is required to attend court at a place other than where he resides or is employed, nor shall it apply to any such witness who is not a regularly employed and salaried officer or other employee of any such county, city or other municipality.

K.S.A. 28-147 states thus:

"No officer shall receive any fees for constructive services or mileage in any case."

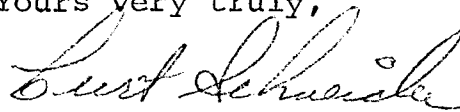
You inquire whether "any law enforcement officer employed by any level of government [may] receive fees, either mileage or witness, when testifying in a court in the State of Kansas, but outside of the county in which he is employed, in criminal cases."

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Under K.S.A. 28-126, no person holding any office or appointment under any county, city or other municipality shall be paid any witness fees in "any case whatsoever" when appearing as a witness for the State of Kansas, county, city or other municipality, which is a party to the suit. This prohibition does not apply, however, when the witness is required to attend court at a place other than where he or she resides or is employed. Thus, any law enforcement officer, whether the city or county, who is required to testify as a witness for the state in a criminal proceeding at a place other than where he or she is employed or resides, is entitled to those fees and mileage prescribed by K.S.A. 28-125.

It is by no means clear what constitutes "constructive services or mileage" under K.S.A. 28-147. That provision, however, has no apparent relevance to K.S.A. 1974 Supp. 28-126.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj