



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 84

Gene Barrett  
Cherokee County Attorney  
Cherokee County Courthouse  
Columbus, Kansas 66725

Re: Fees and Salaries -- Fees in All Counties and  
Salaries in Certain Counties -- Certain Officials  
Not to Receive Witness Fees; City Police Officers

Synopsis: A city police officer is not entitled to a witness  
fee for appearing in district court on behalf of  
the state when the district court is in a city  
other than the one where the officer is employed,  
but still within the same county. To the extent it  
conflicts with the principles stated herein,  
Attorney General Opinion No. 75-266 is withdrawn.  
Cited herein: K.S.A. 28-126.

\* \* \*

Dear Mr. Barrett:

As Cherokee county attorney, you request our opinion as to  
whether a city police officer is entitled to a witness fee for  
appearing in district court on behalf of the state when the  
district court is in a city other than the one where the  
officer is employed, but still in the same county.

K.S.A. 28-126 addresses this issue by stating:

"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 employee of any such county, city or other municipality."

The Kansas Supreme Court interpreted similar statutory language when deciding whether Kansas City, Kansas city police officers could receive compensation for being witnesses for the state in Wyandotte county:

"The statute should be regarded as one affecting the compensation of public officers rather than as one relating to witness fees. The legislature may give or withhold compensation to a class of public officers in any measure it sees fit, without violating any constitutional principle of equality, and a person accepting an office must take it with all its limitations. In this instance the legislature merely cut off pay for time consumed by the officers referred to in attending court as witnesses, believing that sufficient recompense was already made by way of official salary or fees. By taking one of the designated offices a person assents to this condition and relinquishes all right to fees as a witness for the state or the municipality of which he is an officer." Claflin v. Wyandotte County, 81 Kan. 57 (1909).

A few years later the Kansas Supreme Court in Anderson v. Shawnee County, 91 Kan. 363 (1914) reaffirmed the analysis stated in the Claflin case.

"The constitutionality of the statute was affirmed in the case of Claflin v. Wyandotte County, 81 Kan. 57, 105 Pac. 19. In the same case it was held that the statute is one affecting the compensation of

public officers and not one relating to witness fees, the legislative purpose being to cut off pay for attending court when recompense for the time consumed is made by way of official salary or fees. The statute governs in all cases to which the reason for its enactment extends. It is peculiarly applicable to police officers who may be called as witnesses in state cases. Although such officers are chosen by local municipal authority, the performance of their duties is not a matter of local concern only. They are not mere servants and agents of the city, but are appointed and act for the benefit of the public at large. They are essentially state functionaries. (The State, ex rel. v. Hunter, 38 Kan. 578, 583, 17 Pac. 177; Peters v. City of Lindsborg, 40 Kan. 654, 656, 20 Pac. 490; 1 Dillon, Municipal Corporations, 5th ed., § 103.)

"The plaintiff's salary as a police officer fully compensated him for that portion of his time occupied in attending court as a witness for the state."

The Kansas Supreme Court has interpreted this statute so that the Baxter Springs city police officer in your example would not be allowed a witness fee for appearing in the district court in Columbus. We believe Attorney General Schneider's opinion no. 75-266, which fails to cite these cases, is in error.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma  
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