

the reasonableness of any fees charged. As a general rule, courts have the inherent power to do all things that are reasonably necessary for the administration of justice within the scope of their jurisdiction, 20 Am Jur 2d, Courts, § 79, p 440. The consulting of independent medical experts is an integral and necessary part of the civil commitment proceeding. The effective administration of justice in commitment proceedings before a probate court requires that the court pass on the reasonableness of any fees which are to be paid by the county as a result of pending court actions.

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**POLICE OFFICERS: Witness Fees.**

**WITNESS FEES: Police Officers.**

Contracts with police officers may provide for time-and-a-half pay for court appearances by a police officer.

Opinion No. 4866

June 4, 1975.

Honorable Ray C. Mittan  
State Representative  
The Capitol Building  
Lansing, Michigan

You have requested my opinion on the following question:

“Do Police Department contracts requiring payment of time and a half for three hours for each court appearance required of an officer conflict with the witness fee provisions of the statutes of the State of Michigan?”

The provisions for payment of fees for persons appearing on behalf of the People in criminal cases are contained in the Code of Criminal Procedure, 1927 PA 175, as amended; MCLA 760.1 *et seq*; MSA 28.841 *et seq*.

MCLA 767.36; MSA 28.976 provides as follows:

“It shall not be necessary to pay or tender any fees whatever to any witness subpoenaed on the part of the people of this state in support of any prosecution, but such witness shall be bound to attend as if the fees allowed by law to witnesses in civil actions had been duly paid to him.”

The payment of witness fees except as provided by statute is prohibited by MCLA 775.7; MSA 28.1244, as follows:

“Whenever any person shall attend any court of record as a witness on behalf of the people of this state, upon request of the public prosecutor, or upon subpoena, or by virtue of a recognizance for that purpose, and it shall appear that such person has come from any other state or territory of the United States, or from any foreign country, or that such person is poor, the court may, by an order to

be entered on its minutes, direct the county treasurer of the county in which the court may be sitting, to pay such witness such sum of money as shall seem reasonable for his expenses; and no fees shall be allowed or paid to witnesses on the part of the people in any criminal proceeding or prosecution except as is provided in this section and act."

The fees to be paid witnesses are fixed by MCLA 775.13; MSA 28.1250, as follows:

"Whenever any person shall attend any court as a witness in behalf of the people of this state upon request of the public prosecutor, or upon a subpoena, or by virtue of any recognizance for that purpose, he shall be entitled to the following fees: For attending in a court of record, \$12.00 for each day and \$6.00 for each half day; for attending in a justice court or upon an examination, \$10.00 for each day and \$5.00 for each half day; and for traveling, at the rate of 10 cents per mile in going to and returning from the place of attendance, to be estimated from the residence of such witness if within the state; if without the state, from the boundary line which witness passed in going to attend the court.

*No peace officer shall receive any fee as a witness in behalf of the people of this state if he is on duty at the time he shall attend court, nor shall he receive compensation in going to the place of attendance unless he shall travel thereto at his own expense.*" [Emphasis added]

It may be noted that the statute bars payment of any witness fee to a police officer on duty at the time he attends court. In *Starmont v Cummins*, 120 Mich 629; 79 NW 897 (1899), the Michigan Supreme Court ruled that a police officer who arrested and brought a prisoner to court and testified in the case was not entitled to payment under a statute providing witness fees for persons attending court as witnesses by request of the prosecutor, by subpoena or other process. The Court noted that the officer was in court as an officer in charge of a prisoner, and entitled to receive compensation as an officer.

The Court stated:

"Those who are familiar with criminal law are aware that the officer making the arrest is frequently sworn as a witness. Is he, under those circumstances, entitled to fees both as an officer and a witness? No such rule should be adopted, unless the statute clearly provides it. There is nothing in the statute to indicate it." 120 Mich at 630, 79 NW at 897-898.

In OAG, 1927-28, p 312 (April 6, 1927), it was held that an officer is entitled to a witness fee subject to the limitation that when in attendance upon trial in the course of his duties for which he is otherwise compensated, he is not so entitled. The opinion stated at p 313:

"Our court has held in the case of *Starmont v Cummins*, 120 Mich 629, that the officer who makes the arrest and brings the prisoner into court and who receives his fees therefor is not entitled to additional fees upon being sworn in the case as a witness. The court held that the purpose of the statute was to compensate a witness to some extent

for his loss of time. The general rule has been stated in 19 Ann Cases 168, 169, 'where a public officer is not required in the performance of the duties of his office, to be present in person upon the trial of a particular case; he is entitled to the same fees as any private person if he is called as a witness in such case.' But it is also stated that 'where it is the legal duty of a public officer to be in attendance upon the trial of a case in his official capacity and he is sworn as a witness, he is not entitled to fees as a witness.'

"In 28 R C L, 662, it is said:

'Where a public officer is not required in the performance of the duties of his office to be present in person upon the trial of a particular case, he is entitled to the same fees as any private person if he is called as a witness therein. However, the contrary is true if it is his legal duty to be in attendance upon the trial of a case in his office capacity.'

In OAG, 1951-1952, No. 1320, p 135, 138 (December 21, 1950), this office, citing *Starmont v Cummins, supra*, again stated that persons having a legal duty to be in attendance upon the trial in a case in some legal capacity are not entitled to witness fees. However, when a police officer appears in court to testify in a criminal matter as part of his duties, the compensation he receives from his employer is not a witness fee; it is compensation for special duty even though that duty performed may include testifying in court. A witness fee is paid to the witness by the party and constitutes a court cost, whereas compensation is paid by the employer for services rendered to the employer. The distinction in this case may be a fine one, but it does exist and does control the result.

It is therefore my opinion that police department contracts requiring payment of time and a half during court appearances required of a police officer do not conflict with the witness fee provisions of the statutes of the State of Michigan.

FRANK J. KELLEY,  
*Attorney General.*

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