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SPRINGFIELD

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FILE NO. S-1353

COMPENSATION:  
Arresting Officer Should Not  
Receive Witness Fee for  
Testifying Against Arrestee

Honorable Alan C. Downen  
State's Attorney  
Hamilton County  
Courthouse  
McLeansboro, Illinois 62859

Dear Mr. Downen:

You have asked my opinion whether police officers should receive the statutory witness fee for testifying against persons they have arrested. You state that the question arises when such officers must testify during times other than their normal duty hours. In my opinion, the law does not require payment of fees in such cases.

Section 47 of "AN ACT concerning fees and salaries, and to classify the several counties of this State with reference thereto" (Ill. Rev. Stat. 1977, ch. 53, par. 65) provides that:

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"Every witness attending in any county upon trials in the courts shall be entitled to receive the sum of \$20.00 for each day's attendance and 20 cents per mile each way for necessary travel. \* \* \*"

The Act does not expressly include or exclude arresting officers from receiving the witness fee; nor have any reported cases under the Act addressed that issue. But in Anderson v. City of Rockford (1945), 324 Ill. App. 648, 650, the court stated:

" \* \* \*

\* \* \* It is a well-settled rule that a person accepting a public office, with a fixed salary, is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of such duties. \* \* \*"

To similar effect see Gathemann v. Chicago (1914), 263 Ill. 292, 295-96; Woods v. Village of LaGrange Park (1939), 299 Ill. App. 1, 3; 4 McQuillin on Municipal Corporations, sec. 12.193a at 80, 81 (3d ed. 1968):

"An officer's or employee's performance of extra duties does not entitle him to extra compensation. Generally speaking, he is limited to the compensation fixed by law, notwithstanding he is required to perform other public duties to which fees may be attached. \* \* \*"

Work outside of office hours ordinarily will not justify extra pay where the salary is definitely prescribed by law. \* \* \*"

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This leaves only the question whether testifying against arrested persons is one of the duties of a policeman. I am of the opinion that it is. Without the implied duty to testify, a policeman's express duty to arrest would accomplish little. This duty to testify is explicitly recognized in the statutes as to some police officers. Section 12 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1977, ch. 125, par. 12) allows deputy sheriffs to perform the duties of sheriffs, and section 17 of that Act (Ill. Rev. Stat. 1977, ch. 125, par. 17) provides that:

"Each sheriff shall be conservator of the peace in his county, \* \* \* and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination."

Similarly, section 2 of "AN ACT to revise the law in relation to criminal jurisprudence" (Ill. Rev. Stat. 1977, ch. 125, par. 82) states that:

"It shall be the duty of every sheriff, coroner, and every marshal, policeman, or other officer of any incorporated city, town or village, having the power of a sheriff, when any criminal offense or breach of the peace is committed or attempted in his presence, forthwith to apprehend the offender and bring him before some judge, to be dealt with according to law; \* \* \*."

Therefore, they are not entitled to be paid witness fees.

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This opinion of course does not mean that the department employing the policemen may not compensate them for time spent in testifying outside regular duty hours, with additional pay or compensatory time off as in your county, if such compensation is otherwise legal.

Very truly yours,

A T T O R N E Y G E N E R A L