

Fees - Probate Judges:

Probate Judges are entitled to fees for certifying to assessors lists of administrators and may retain same if it is in excess of salary.

July 14, 1944.



Hon. Ralph B. Nevins  
Prosecuting Attorney  
Hickory County  
Hermitage, Missouri

Dear Mr. Nevins:

We have your request for an official opinion, dated July 8, 1944, which is as follows:

"Would like an opinion on the following:

"Is the Probate Judge entitled to charge a fee for certifying list of estates to the assessor, as required by Section 10957, and if so, is he entitled to retain the fee?"

Section 10957, R. S. Mo. 1939, provides in part as follows:

"It shall be the duty of every judge of the probate court in each county in this state to certify to the county assessor, on the first Monday of June in every year, a written list of every administrator, executor and guardian, and of every other person legally in charge and control of any estate in the probate court; \* \* \*"

Section 13404, R. S. Mo. 1939, provides in part as follows:

"The judges of probate courts, respectively, shall be allowed fees for their services as follows: \* \* \*

"For copying any order, or record or paper, not herein provided for, for every hundred words and figures..... 10¢ \* \* \*

"For every certificate and seal..... 50¢ \* \* \*"

The duty of the probate judge to make the list is set out above and the fee which he is to receive is also definitely set out. The rule as stated in the case of Smith v. Pettis County, 136 S.W. (2d) 282, L.C. 285, is as follows:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup., 129 S.W. (2d) 857; Ward v. Christian County, 341 Mo. 1115, 111 S.W. (2d) 182."

Your second question as to whether or not the probate judge would be entitled to retain the fee collected by him as provided above is answered by Section 13404, Laws of Missouri, 1943, page 8681, which is in part as follows:

"The Judges of the Probate Courts in counties which now have or may hereafter have a population of less than 19,000 inhabitants shall receive for their services annually, to be paid out of the County Treasury in equal monthly installments at the end of each month by a warrant drawn by the County Court upon the County Treasury minimum salaries as follows: In counties having 10,000 inhabitants or less, the sum of \$750.00; \* \* \*

"but should the yearly sum of fees earned and collected by any Probate Judge of any such county, and his clerk or clerks, by virtue of the office, exceed the amount which such Judge would be entitled to receive by reason of the population of said county as aforesaid, then such judge shall be entitled to retain the excess subject to the limitations set out in Section 13404 of Article 2, Chapter 99, Revised Statutes of Missouri, 1939, and the County Court shall draw a warrant or warrants upon the County Treasurer in favor of such Judge for such excess fees."  
(Underscoring ours)

#### CONCLUSION

It is therefore the opinion of this office that the probate judge of Hickory County shall be entitled to the sum of 10¢ per hundred words or figures for each list made out by him as provided for in Section 10957, R. S. Mo. 1939, and the further sum of .50¢ for

July 14, 1944.

making the certificate as therein provided.

It is further the opinion of this office that inasmuch as Hickory County has a population of less than 10,000 inhabitants the probate judge can only retain the above fee in the event that the total fees collected by him exceed the sum of \$750.00 as provided in Section 13404a, Laws of Missouri, 1943.

Very truly yours

GAYLORD WILKINS  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK

GW.sc