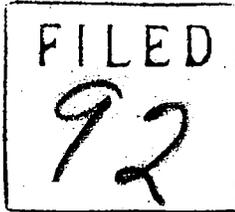


CAPE GIRARDEAU COURT OF
COMMON PLEAS:
PROBATE JUDGE OF CAPE
GIRARDEAU COUNTY:

The judge of the Cape Girardeau Court of
Common Pleas is required to account for
and deposit the $2\frac{1}{2}\%$ of the state inheri-
tance tax as an accountable fee.

JOHN M. DALTON
XXXXXXXXXX

February 5, 1953



J. C. JOHNSEN
XXXXXXXXXX

Mr. Raymond H. Vogel
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Sir:

Your recent request for an official opinion has been
received by this department. You thus state your opinion
request:

"I wish an opinion from your office on
the following matter.

"Article V, Section 24 of the 1945 Con-
stitution provides as follows:

"No judge or magistrate shall receive
any other or additional compensation for
any public service, or practice law or do
law business, except probate judges dur-
ing their present terms. Judges may re-
ceive reasonable traveling and other
expenses allowed by law. The fees of
all courts, judges and magistrates shall
be paid monthly into the state treasury
or to the county paying their salaries."

"Section 145.140 Revised Statutes 1949,
provides that $2\frac{1}{2}\%$ of the Inheritance Tax
shall be paid to the probate judge for
fee, which fees shall be deposited by
the probate judge as provided by law.
Section 481.130 provides that the probate
judge shall not receive any compensation
for any public service other than his
compensation as such judge. Section
483.580 refers to the $2\frac{1}{2}\%$ of the Inheri-
tance Tax in the list of fees and provides

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that the fees shall be turned over to the State Director of Revenue or the County Treasurer, as the case may be.

"Section 480.020 provides, among other things, that the Cape Girardeau Court of Common Pleas has concurrent original jurisdiction with the Probate Court of Cape Girardeau County. Section 480.120 provides for the salary of the judge of the Cape Girardeau Court of Common Pleas. Is the judge of the Cape Girardeau Court of Common Pleas required to account for and deposit the 2½% of the State Inheritance Tax as an accountable fee?"

We first direct your attention to Section 480.020, RSMo. 1949, which section reads:

"The said court of common pleas shall be held within the city of Cape Girardeau, and shall have power and jurisdiction within the city, township and county of Cape Girardeau, as follows:

"(1) Concurrent original jurisdiction in all civil actions at law or in equity with the circuit court of said county, and concurrent jurisdiction with the circuit court of said county in the treatment, correction and confinement of delinquent minors;

"(2) A concurrent superintending control with said circuit court over magistrates in all civil cases in said county of Cape Girardeau, and exclusive jurisdiction in appeals in all cases tried before the recorder or police judge of the city of Cape Girardeau and in all civil cases tried before magistrates within said city and township of Cape Girardeau;

"(3) Concurrent jurisdiction with said circuit court in appeals in all civil cases tried before magistrates in all townships throughout said county other than said township of Cape Girardeau;

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"(4) Concurrent original jurisdiction with the probate court of Cape Girardeau county."

From the above, and from subsequent sections, it would appear that the judge of the Cape Girardeau Court of Common Pleas is a combination circuit and probate judge with all of the powers of each, with certain exceptions in regard to certain appellate cases, and with certain exclusive powers in regard to certain other types of appellate cases.

Paragraph 1 of the above section gives him "concurrent original jurisdiction with the probate court of Cape Girardeau County."

In doing this the statute, we believe, places the judge of the Cape Girardeau Court of Common Pleas, in this particular, upon the same basis as the probate judge of Cape Girardeau County. We believe that in consequence the judge of the Cape Girardeau Court of Common Pleas would be subject to the laws regulating the probate judge of Cape Girardeau County, one of which laws, as you point out, is Section 145.140, RSMo 1949, which section provides that two and one-half per cent of the inheritance tax shall be paid to the probate judge for fee, which fee shall be deposited by the probate judge as provided by law. Section 483.580, RSMo 1949, provides that probate judges shall, at the end of each month, deposit this fee with the Director of Revenue or the county treasurer, depending on the population of the county.

We believe that the restriction thus applied to the probate judge by the above section would be equally applicable to the judge of the Cape Girardeau Court of Common Pleas since this latter judge is given the same powers as the probate judge but no more power, and that since the probate judge is required by Section 145.140, supra, to deposit the two and one-half per cent of the inheritance tax as provided by law that the same requirement would apply to the judge of the Cape Girardeau Court of Common Pleas, and that the latter judge is required to account for the two and one-half per cent as an accountable fee.

As strengthening this conclusion we refer you to Section 483.570, RSMo 1949, which reads:

"The fees of the clerk of the Cape Girardeau court of common pleas, shall be the same as, and shall be governed

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by the law regulating, the fees of the clerks of the circuit court and probate courts, and magistrates, respectively."

We believe that the same conclusion could be reached by another approach. Section 24 of Article V of the Missouri Constitution, which you quote in part, reads in full as follows:

"All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office. Until the end of their present terms probate judges shall continue to receive compensation and clerk hire as now provided by law. The salaries of magistrates shall be fixed by law. No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. Judges may receive reasonable traveling and other expenses allowed by law. The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

Since the judge of the Cape Girardeau Court of Common Pleas certainly is a "judge" as that word is used above, and since if he did not account for the two and one-half per cent in question he would be receiving "additional compensation for a public service," for him not to account for the two and one-half per cent would clearly be in violation of Section 24, Article V, supra.

Finally, looking at the whole law on this matter and taking into consideration the undoubted intention of the Legislature, we cannot believe that the Legislature, which placed the judge of the Cape Girardeau Court of Common Pleas on a similar basis as the probate judge of Cape Girardeau County, intended to make an exception in this matter of two and one-half per cent of the inheritance tax. We believe further that if such had been the intention of the Legislature that it would have so indicated, which it did not do.

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CONCLUSION

It is the conclusion of this department that the judge of the Cape Girardeau Court of Common Pleas is required to account for and deposit the two and one-half per cent of the state inheritance tax as an accountable fee.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:lrt