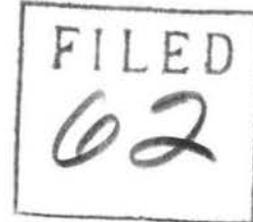


PUBLIC ADMINISTRATORS) Public Administrator appointed Guardian of
GUARDIANS) incompetent persons receiving old age assis-
COUNTY COURT) tance cannot be paid commission from county
funds.

June 18, 1949



Honorable Edwin Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this Department on the question whether or not the public administrator in your county, who has been appointed guardian of twelve mentally incompetent individuals receiving old age assistance grants, can be paid a fee of five percent by the County Court from county funds.

We regret that we have not been able to give your request more prompt attention, but due to the many opinion requests that have come into this office prior to yours, we have been unable to do so.

Reference is made in your letter to Section 9417, Laws of Missouri 1941, page 647, apparently for the purpose of inquiring as to its application to the questions transmitted. This Department under date of June 11th, 1948, rendered an opinion to the Probate Judge of Cape Girardeau County involving the interpretation and application of that section. We herewith enclose a copy of that opinion.

Obviously, it was the intention of the Legislature as manifested in the first paragraph of Section 9417, supra, to relieve those impecunious persons relying on old age assistance, who are also incompetent, from the further economic hardship of paying fees or other expenses incident to guardianship proceedings when a guardian is appointed for them.

The statute in effect declares that upon a finding by the Probate Court that the aged person is unable to assume such expense, the "fees or other expense," using the language of the statute, which are incident to guardianship proceedings shall be waived. We believe the language of the statute is sufficiently liberal to relieve such aged persons from payment of any court costs incident to said proceedings, and it is our further thought

that it relieves them from payment of any guardianship fees which we believe would be encompassed by the words of the statute, "other expense."

To ascertain whether or not the county court can pay the public administrator the fee requested, we must look for other statutory authority, for the contracting of indebtedness by a county is dependent upon such authority. Thus, the rule appears in Vol. 14, Am. Jur., Section 6162, p. 222:

"A county has only such powers and authority as may be conferred upon it by the legislature; and while the county board acts for the county in financial matters, its authority in these respects extends only so far as the statutes provide. * * *

"Taking the view that the power to incur indebtedness is not essential to the purpose for which counties are created, it has been held that they have no authority to contract debts without an express grant of power for that purpose. * * *"

Looking to the statutes relating to compensation of guardians and curators, we find that their compensation is left largely with the discretion of the Probate Court. Section 435, R. S. Missouri 1939, in Article 16, styled, Guardians and Curators of Minors, in part, provides:

"Guardians and curators shall receive such compensation for their services as the court shall decide to be just and reasonable, * * *"

Cases under this section holding that the matter of allowing compensation to guardians is within the discretion of the Probate Court are *In Re Switzer*, 201 Mo. 66, 98 S.W. 46; *Berry v. Berry*, 218 S.W. 691.

While there is no statute specifically relating to compensation of guardians of mentally incompetent persons, as does Section 435, supra, in connection with guardians of minors, the Appellate Courts have recognized that their compensation is also within the discretion of the Probate Court and usually is arrived at on a percentage basis. *State to Use of Lancaster v. Jones*, 89 Mo. 470; *Noelke v. Jenny*, 298 S.W. 1055. Of course, neither the statute nor the cases

provide that the compensation of guardians may be paid by the county court from public funds.

Relating to the compensation of public administrators, Section 298, R. S. Missouri 1939, in part, provides:

"He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court, for special reasons, allow a higher compensation. * * *"

The above section in providing for the compensation of public administrators refers to the compensation of executors and administrators as allowed by law, which is five percent of the personal property, Section 220, R. S. Missouri 1939.

None of the sections of the statutes cited provide for or permit the county court to pay any of the compensation or fees of executors, administrators or guardians, nor do we find any other statutory authority which would permit this to be done. Under Section 295, R. S. Missouri 1939, the office of public administrator is a public, elective office, ergo, the person holding said office is a public officer.

Generally, the rules expounded by the court relating to the compensation of public officers are strictly construed against the officer. The Supreme Court of Missouri has declared that the method of compensating public officers is confined to the particular manner provided by the Statute. Thus, in *Nodaway County v. Kidder*, 129 S.W. (2d), 857, 1. c. 860, the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. * * *"

CONCLUSION.

It is therefore our view of the matter, and such is our opinion that the public administrator in your county, who has been appointed

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guardian of certain mentally infirm persons receiving old age assistance, cannot be paid his five percent commission by the county court from public funds.

Respectfully submitted,

APPROVED:

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