

BLIND PENSIONS:

Fees of Probate Judges for taking
applications for blind pensions.

August 29, 1933

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Mrs. Mary E. Ryder,
3858 Westminster Place,
St. Louis, Missouri

Dear Mrs. Ryder:

This department acknowledges your letter under
date of August 23, 1933, as follows, to-wit:

"Several inquiries have been directed
to this office regarding fees by the pro-
bate judges for taking applications for
blind pensions.

From the pension law it is understood
that 'Any person who desires the benefits
of the blind pension shall apply to the
judge of the probate court within his or
her county or city or to the Commission
for the Blind.' However, there is no
mention of whether a charge is to be made
by the probate judge for this service. Of
course when an application is taken at this
office it is without any expense to the
applicant.

In order that there may be a uniform
manner for the handling of applications for
blind pensions taken by the probate judges
I am seeking your advice. If they are en-
titled to a fee, please state the amount,
for while we want to be considerate of the
probate judges, we are deeply concerned
about the applicants, who usually are en-
tirely without funds and in the hope of
securing the blind pension are willing to
volunteer payment of a fee far in excess of
their economic status, just to be assured
of the pension."

Mrs. Mary E. Ryder #2.

In Sanderson v. Pike County, 185 Mo. 1. c. 605,
the Supreme Court said:

"It is a well settled law in this state that the right to compensation for the discharge of official duties is purely a creature of statute, and that the statute that is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer unless the statute gives it."

In the case of State Ex Rel v. Adams, 172 Mo. 1. c. 7, the Supreme Court in passing upon a claim for services rendered by the Secretary of the Board of Equalization of Linn County, the court said:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provided such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that statute which is claimed to confer such right must be strictly construed. A mere application of these principals to the statute determines the question in hand. No provision is therein to be found giving any such compensation to the Secretary of the Board of Equalization."

Mrs. Mary E. Ryder # 3.

In the Case of Jackson County v. Stone, 168 Mo. 1. c. 581,
the Supreme Court had this to say:

"It is well settled law that all statutes in reference to costs must be construed strictly and that an officer cannot legally claim any remuneration unless the State has expressly conferred the right."

Also in the case of Givens v. Davies County, 107 Mo. 1.
c. 608, the Supreme Court said:

"A public officer is not entitled to compensation by virtue of a contract expressed or implied. The right to compensation exists, when it exists at all, as a creation of law, and as incident to the office. In the absence of constitutional restrictions the compensation or salary of a public officer may be increased or diminished during his term of office, the manner of his payment may be changed or his duties enlarged without the impairment of any vested right."

The statute in question, Section 8896, R. S. 1929 reads
thus:

"Any person who desires the benefit of this article shall apply to the judge of the Probate Court within his or her county or city or to the Commission for the Blind, who, if satisfied that the applicant comes within the provisions of this article, shall grant to the applicant a certificate of such fact, and the certificates granted by the Probate Judges, shall be certified to the Missouri Commission for the Blind, etc."

Mrs. Mary E. Ryder #4.

It would seem that the presentation of the application to and the hearing before the Probate Judge is in the nature of a mere preliminary matter for the convenience of the blind person who is permitted to make his application there first, if he chooses, for the Commission is the body which is to pass on the merits of the application. There is no provision, either in this section or any other section in said article, which provides any fee for any service that may be required of a Probate Judge in the matter of an application by one desiring benefits under said article.

In view of the decisions heretofore referred to this department holds that the compensation to a Probate Judge, who is a public officer, is purely a matter of statute and not one of contract, either expressed or implied, and that compensation to him exists, if it exists at all, solely as the creation of the law and in this case no provision appears in the statute for compensating Probate Judges for whatever services they may render in matters of this nature and therefore no fee can be legally charged, taxed or collected. We further hold, in view of the law as announced herein, that fees are only legally collectible when expressly authorized by the law, and an officer demanding fees, either from the public who deals with him or from the state, must point to the particular statute which authorizes them.

Mrs. Mary E. Ryder #5.

We are sorry that you could not have received this opinion sooner, however the delay has been unavoidable on our part we assure you.

Very truly yours, .

APPROVED

Assistant Attorney General.

Attorney General.