

NATIONAL BANKRUPTCY ACT - Agricultural compensations and extensions - liability for cost of publication of notice.

77-1
September 14, 1934

Mr. Edward A. Sowers,
Publisher, The Boonville Advertiser,
523 Morgan Street,
Boonville, Missouri.



Dear Sir:

Your letter of August 20, 1934, has been received, such letter being in the following terms:

"In behalf of The Boonville Advertiser I should like to ask your opinion on a matter of state-wide significance which has arisen here.

The local conciliation commissioner, who has been appointed under the new bankruptcy act, is ready to publish his first notices for a meeting of the creditors of the bankrupt or near bankrupt, working under Section 75 of the new law. But before placing these notices he wanted to know who was going to pay for them. Under the terms of the law, the bankrupt files a court fee or filing fee of \$10 and there is provision that this is all of the costs he must bear. Does the printing cost come out of the \$10 'court fee' or 'filing fee' or what provision is made for that?"

Section 75 of the National Bankruptcy Act was enacted as Public No. 420, 72nd Congress, Chapter 204 (March 3, 1933) as amended by Public No. 296, 73rd Congress (June 7, 1934). The paragraph of Section 75 relating to fees is designated (b) and is as follows:

"b. Upon the filing of any petition by a farmer under this section there shall be paid a fee of \$10 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for

his services, including all expenses, a fee of \$25 for each case docketed and submitted to him, to be paid out of the Treasury. A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of \$5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceedings under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of the conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived."

There is nothing in Section 75 requiring the publication of a notice of the first meeting of creditors or the publication of any other notice or proceeding. However, paragraph (n) of Section 75 provides that except as otherwise provided in Section 75 the general law relating to bankruptcies shall apply to proceedings under such Section 75 and under the general provisions of the National Bankruptcy Act it is provided that notice of the first meeting of creditors shall be published at least

3. Mr. Edward W. Sowers.

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once (Code of Laws of the United States, Title 11, Chapter 6, Section 94 (b)), so presumably since there is nothing to the contrary in Section 75 there should be a publication of this notice for proceedings under Section 75.

An analysis of paragraph (b) of Section 75 quoted above shows that in the absence of supervision over the farming operations of a farmer the only costs to be charged or taxed to either the petitioning farmer or to his creditors would be the filing fee of \$10 which goes into the Treasury. It would thus seem that all the expenses of administration, including costs of publication, would come out of the Treasury and since neither the farmer or his creditors are to be charged for anything other than the filing fee and the cost of supervision of farming operations, if such supervision is undertaken, it would seem that the Treasury must bear all other expenses. The filing fees as received could not apparently be paid by the conciliation commissioners to the publishers of the notices for the reason that the fees when paid are required to be "covered into the Treasury".

The conclusions set out above are not to be regarded as an official ruling by us for two reasons: First, that you have asked us for an opinion on the duties of an official of the Government of the United States under an Act of Congress and we do not feel that we have any authority to hand down an official opinion on a purely Federal matter, it seeming to us that the Attorney General of the United States would more properly be in a position to make a ruling on this question, and second, this office by Revised Statutes Missouri 1929, Section 11274, is authorized and required to give written opinions to various State officials on their duties but is not authorized to give official opinions to any others.

Very truly yours,

EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL

APPROVED:

ATTORNEY GENERAL