

PROBATE JUDGE - Method of accounting by probate judge for fees collected during his term which had accrued to his predecessor.

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May 28, 1935

Hon. Richard Chamier,  
Prosecuting Attorney,  
The County of Randolph,  
Moberly, Missouri.



Dear Sir:

A request for an opinion has been received from you dated March 6, 1935, in which the following question is asked:

"The Probate Judge of this County is of the opinion that his predecessor in office is entitled to the fees earned by said predecessor. By what method does he protect his office in the reports he must make to the State Auditor? Does he take credit for the costs collected by the former Probate Judge?"

When the term of <sup>a</sup> probate judge expires, as to fees accrued but uncollected during his term, R. S. Missouri, 1929, Section 11782 imposes on such former probate judge the following duty:

"and within three months after the expiration of his term of office he shall file for record with said clerk of the circuit court a statement, verified by his affidavit, of all fees which accrued but were not collected during his term of office, specifying the names of the parties from whom due, the amounts due, on account of what services rendered and the date of accrual."

When this statutory provision is complied with there comes into existence a record showing in detail and by specific description the uncollected fees which did not accrue to or during the term of his successor.

As to such of the above fees as are paid to the successor probate judge, R. S. Missouri, 1929, Section 11822 provides for the keeping of books by various officers con-

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taining "a correct account of all fees collected by such officer", and Section 11823 provides as follows:

"It shall be the duty of all sheriffs, marshals, coroners, and all clerks of courts of record, and all other officers, to enter in such book all fees that they may now have in their hands belonging to others, giving the name of the owner and amount of such fees."

Section 11824 provides for semi-annual payment of the fees governed by Section 11823 to the county treasurer, and Section 11825 requires the county treasurer to keep an account of them and to pay them to the proper owners.

The responsibility for the proper ultimate application by a former probate judge of fees collected by his successor and paid over to such former probate judge under the provisions of the statutes last referred to, seems to be imposed upon such former probate judge by Section 11782 under the following provision:

"and whenever at any time after the expiration of the term of office of any probate judge the amount of fees collected by or for him, irrespective of the date of accrual, shall exceed the sum equal to the aforesaid annual compensation provided for a judge of the circuit court having jurisdiction in such county, it shall be the duty of such probate judge to pay such excess, and all fees thereafter collected by or for him on account of fees accrued to him as such probate judge less ten per cent. thereof, within thirty days from the time of collection, into the county treasury for the benefit of the school fund."

As to fees accruing to a former probate judge which his successor neither earns nor collects, it would seem that such fees would not be reflected in any report or settlement of such successor, as they would neither have been earned by him nor would they have passed through his hands.

In conclusion, it is our opinion that unless otherwise provided by law, a probate judge, as to fees accruing to but uncollected by his predecessor in office, should, as to any such fees collected by him, pay them over to the county treasurer semi-annually and show such payment on any report

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or settlement, if it has been made, and if such payment has not been made to the county treasurer at the time of such report or settlement, should show such collections as fees accruing to his predecessor; that as to such fees accruing to his predecessor as are collected by such predecessor and do not pass through the hands of the probate judge, the probate judge in his report or settlement need not reflect the same.

Very truly yours,

EDWARD E. MILLER  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

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