PROBATE JUDGES: May not act as appraisers or receive fees in such capacity.

December 17, 1936.

12-21

Hon. Richard Chamier,
Prosecuting Attorney,
Moberly, Missouri.

Dear Sir:

We are in receipt of your request for an opinion under date of December 7, 1936, wherein you state as follows:

> "The Probate Judge of Randolph County has indulged in the practice of appointing himself as an appraiser to value estates being probated in his office. He is desirous of knowing if he is violating the law when he acts as an appraiser. He takes the position that inasmuch as he is acting as an individual that it is proper to continue such practice.
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> "Assuming that the practice is not a violation of the law, he then asks if it is his duty to report the fees earned by him in his capacity as an appraiser in his reports to the County on fees collected from his office as Probate Judge.
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> "I will thank you to render an opinion on this subject at your convenience."

Section 57, R. S. Mo. 1929, provides that executors and administrators are to take charge of the estate immediately after the grant of letters.

Section 58, R. S. Mo. 1929, provides that they shall make an inventory and appraisement and states in part that:

> "Such appraisement, verified as provided in this article, shall be accepted unless another appraisement be ordered by the court, as proof of the value of the property appraised, for the purpose of assessing the state inheritance tax, and as the assessed value required in sale of real estate under the provisions of article six of this chapter."

Section 61, R. S. Mo. 1929, provides for the appointment of three persons to appraise the personal property of the estate, thus:

> "At the time of appointing an executor or administrator the court or judge or clerk in vacation shall name three respectable householders of the vicinity of the last abode of the deceased, who was disinterested and of no kin to the administrator or executor, as witnesses, to accompany and aid the administrator or executor in opening and examining the papers, money and other property of the deceased, and in making an inventory thereof, and to appraise all the personal property required by law to be appraised, and if they fail to attend the court or judge or clerk thereof in vacation shall appoint others in their stead, so that three witnesses shall be present to attend the proceeding before it shall be lawful for the executor or administrator to open or examine such papers, money or other property by virtue of his appointment."

Section 72, R. S. Mo. 1929, provides the pay of appraisers, thus:

> "Each witness to the inventory and appraiser shall receive from the estate three dollars per day for his attendance; also such further sum as the court may allow where expert or special services are required to be rendered by the witness to inventory and appraiser."

The judge having appointed himself appraiser, under Section 61, supra, could under Section 72, supra, allow himself $3.00 per day for his services, and also, in his discretion, whatever sum he desired for expert or special services. Then if the judge could not agree with the other two appraisers as to the fair cash value of the property, all that would be necessary would be for him to order another appraisement under Section 58, supra.

We could go into other sections of the statutes providing for the appointment of appraisers by the probate court, but we feel that the foregoing sections are sufficient to indicate the mischief and injury that would result in permitting a probate judge to appoint himself as an appraiser to value estates.

The court in the case of State v. Bowman, 170 S. W. (Mo. App) 700, quotes with approval the definition of "public policy" in Black's Law Dictionary, thus:

> "The term 'policy,' as applied to a statute, regulation, rule of law, course of action, or the like, refers to its probable effect, tendency, or object, considered with reference to the social or political well-being of the state. Thus, certain classes of acts are said to be 'against public policy,' when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injurious to the interests of the state, apart from illegality or immorality."

And on page 703 of the above opinion, the court said:

> "In 23 Ency. of Law, 338, after stating that it has often been enacted that members of legislative bodies are ineligible to offices created by such bodies, the text adds:
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> "'The same rule applies to officers with the power of appointment. They cannot appoint themselves.'"

To permit judges of the probate court to appoint themselves as appraisers would be injurious to the interests of the

public and clearly in violation of public policy. We are, therefore, of the opinion that a judge of the probate court may not act as an appraiser, and hence is not entitled to fees earned in such capacity.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

MW:HR