

February 15, 1937.

2-16

INHERITANCE TAX:

- I. Probate Court not entitled to Appraiser's fee
- II. Nephews of an intestate decedent entitled to exemption of \$500.00 each.



Honorable E. L. Colton,
Probate Judge of Wright County,
Hartville, Missouri.

Dear Sir:

This department is in receipt of your letter of February 10th, requesting an opinion as to the following:

"There are two questions relative to the Missouri Inheritance Tax Laws about which I am having difficulty in establishing a fixed opinion in my mind, and am therefore writing this asking for your assistance in the matter.

Under Section 585 of the Revised Statutes for 1929, which authorizes a Probate Judge to appraise an estate for the purpose of determining the amount of tax due, by performing the same duties required of an appraiser, can he also legally charge the per diem fee allowed an appraiser for such services?

My other problem can best be stated by an hypothetical case. If an intestate decedent leaves as his only heirs three brothers, and two nephews, the two nephews being sons of a fourth brother, who is deceased, are each of the two nephews entitled to \$500.00 exemptions, or should their combined exemptions be \$500.00?

Trusting that you can straighten me out on these points, without too much trouble to yourselves, I am, "

I.

THE PROBATE COURT NOT ENTITLED TO APPRAISER'S FEE.

Section 585, R. S. Missouri 1929 provides that the Probate Court shall have jurisdiction to determine the amount of tax provided under the inheritance tax law and to determine any question that may arise in connection therewith. It further provides that the Court may, on its own motion or on the application of any interested person, including the State Treasurer, the Prosecuting Attorney or the Attorney General, appoint some qualified tax-paying citizen of the county as appraiser. If an appraiser be appointed under this Section he is entitled to \$5.00 per day for the time he is actually engaged in the performance of his duties. Section 589 R. S. Missouri 1929. The question here before us is as to whether the Probate Court, acting as appraiser under Section 585, can collect this fee. We think not and for the following reasons:

In the first place, we do not believe that it was the intention of the Legislature in enacting this law that the Probate Court should be entitled to a per diem as appraiser. For instance, it is provided in section 585 that the appraiser shall file with the court an oath, and, further, shall file a notice with the court appointing him of the time and place for hearing the evidence. In Section 586, it is provided that he shall make a report of his appraisement to the Court, in writing. Section 587 provides that exceptions may be filed to this report and such exceptions determined by the Court in a summary manner. These and other sections clearly show that it was the intention of the Legislature that the Court and the appraiser appointed by the Court are to be separate and distinct offices.

In addition to the above, it is a principle too familiar to need citation that a public officer seeking a fee must be able to point to a statute granting to him the fee in question. In the case here at hand the \$5.00 per diem is granted by statute to the appraiser, a qualified tax-paying citizen of the county, appointed by the Court. It is against the policy of the law for an officer to use his appointing power to place himself in office. "Other reasons might be given, but it is sufficient to say, and we so hold, that it is against the policy of the law to allow a member of an appointing body in a case like this where the appointive office is a lucrative one to become the beneficiary of the appointment". State v. Bowman, 184 Mo. App. 549, l. c. 558.

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II.

NEPHEWS OF AN INTESTATE DECEDENT ENTITLED TO EXEMPTION
OF \$500.00 EACH.

Section 575 R. S. Missouri 1929 grants an exemption of
\$500.00 to each of the persons described in the second subdivision
of Section 572. The second subdivision of Section 572 provides:

"Where the person or persons to whom such property
or any beneficial interest therein passes shall be the
brother or sister, or the descendant of a brother or
sister of the decedent, the wife or widow of a son, or
the husband of a daughter of the decedent, at the rate
of three per centum of the clear market value of such
property or interest therein."

In view of this Section, the two nephews in the case at
hand are entitled to an exemption of \$500.00 each.

Respectfully submitted,

JOHN W. HOFFMAN, JR., ASSISTANT
ATTORNEY GENERAL.

APPROVED:

(Acting) Attorney General