

Probate and Probate Judge
SALARIES AND FEES: OFFICERS: ~~Collector's~~ compensation is based on fees collected rather than on fees earned.

July 26, 1937.



Hon. George S. Starrett,
Judge of Probate Court,
Columbia, Missouri.

Dear Sir:

We have received your inquiry which is as follows:

"Pursuant to my conversation with you yesterday, may I now kindly ask you to render to me an opinion as to whether the office of Probate Judge is operated on a yearly collection basis or on yearly earned or accrued basis.

"The particular question before me is as follows: In the year 1935, my office collected fees from all sources, the sum of \$5736.01 and paid out of that sum the following, Clerk hire \$2157.50, Docket printing \$68.78, Judge's Salary or compensation \$3500.00 and turned in to the County the excess of \$9.73.

"In the above total sum collected was \$1604.83 of fees earned or accrued in 1934, which auditors say I cannot use to apply on salary and expenses of 1935, and must now remit this sum to the County. This would result in me receiving only \$1895.17, compensation for the year 1935.

"In view of the fact that I would like your opinion before the audit is finally prepared and filed which will probably be within two or three weeks, may I kindly and most respectfully ask that you give me your opinion as soon as possible."

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We construe your question to be this: During the year 1935 you officially collected \$5736.01, out of which you paid the reasonable costs of the office, clerk hire and your salary, the latter being \$3500.00, and turned over to the County the excess. Of the above \$5736.01, \$1604.83 accrued or was earned in the year 1934. In other words, are you entitled to consider the funds officially collected by you in 1935 regardless of whether they be earned in one year or another?

Replying thereto, Section 11782, R. S. Mo. 1929, defines the salary of the probate judge, the pertinent part of which, for the purpose of your inquiry, being as follows:

"Provided further, that whenever, after deducting all reasonable and necessary expenses for clerk hire, the amount of fees collected in any one calendar year by or for any one probate judge in any county in this state, during his term of office, and irrespective of the date of accrual of such fees, shall exceed," etc., he shall pay the excess, etc., as therein provided; " 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," etc.

Said section further provides that the probate judge shall, each year of his term of office, file with the circuit clerk a verified statement containing a full account of all fees collected and amounts expended for clerk hire, by or for the probate judge, during such year, giving the details thereof.

It will be noted that the above section speaks of the amount of fees collected, and when more than enough to pay the clerk hire, reasonable expenses and salary is collected, the excess shall be paid over. It is entirely silent as to the fees earned or accrued. Likewise, that part of the section

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having to do with the amount collected after the expiration of the term of office does not speak of the date when it was earned or when it accrued, but bases it on the time of collection. And along the same line, that further part of the section requiring the probate judge, after the expiration of a given year, to file a verified statement, provides that it shall contain "a full account of all fees collected."

Webster's New International Dictionary, among other definitions of the word "collect", gives the following:

"To demand and obtain payment of,
as an account or other indebtedness;
as, to collect taxes."

In the Kentucky case of Anderson v. Richards' Ex'rs., 37 S. W. 62, 99 Ky. 661, it is stated that the Dictionary defines the word "accrue" as "to increase; to augment. * * * Interest accrues to principal."

In the New York case of Strasser v. Staats, 13 N. Y. Supp. 167, 168, 59 Hun, 143, the opinion holds that the words "accrue weekly," as used in the by-laws of a mutual benefit insurance association, providing that the dues of members shall "accrue weekly," means that the dues are to be established or measured weekly, and does not mean payable weekly.

In the Iowa case of Gudgel v. Southerland, 90 N. W. 623, 624, 117 Iowa, 309, it is stated that in a statute providing that the executor of a tenant for life who leases real estate so held, and dies on or before the day on which the rent is payable, may recover the proportion of rent which had "accrued" at the time of his death, the word "accrued" must be construed to mean an apportionment of the rent between the executor and reversioner pro rata as to time, because, if accrued is held to mean "due", then the statute is deprived of all vitality.

In the case of Hannibal Trust Co. v. Elzea, 286 S. W. 371, 377, the court said:

"In the interpretation of statutes, words in common use are to be construed in their natural, plain and ordinary signification."

Bearing the above in mind, it is noted that the statute under consideration, defining the salary of the probate judge of your county and the funds to be considered with respect thereto, in no way mentions any classification thereof with reference to when they accrue, but in each instance speaks of how the money is collected. We see no reason why any extraordinary or unusual meaning should be given to the word "collected", as used in this statute, and as stated in the Elzea case, supra, statutes are to be construed in their plain, natural and ordinary signification. We are unable to give the same meaning to the word "accrued" that should be given to the word "collected." It appears that the Legislature meant to base the probate judge's compensation on the amount collected rather than on the amount earned or accrued. Other statutes in Missouri dealing with the compensation of other offices are of slight assistance in arriving at the meaning of the given statute under consideration because of the different wording of those statutes.

To hold that the compensation of the probate judge, under this statute, should be based on the amount of fees accrued would be doing unjustified violence to the plain expression in plain words of the legislative intent, and of course a cardinal rule of statutory construction is to arrive at the meaning and intent of the Legislature.

CONCLUSION

It is our opinion that for the purpose of arriving at the amount of salary or compensation to which the probate judge is entitled in a given year, the fees officially collected by him within the given calendar year are to be considered, and that is true regardless of the amount of fees that accrue within the given year.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

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

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