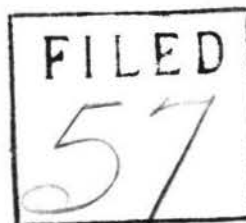


RE: PROBATE COURTS. Statute does not authorize a fee to the Probate Court for finding no tax due in an estate.

January 8, 1938.



Mr. G. Logan Marr,
Prosecuting Attorney Morgan County,
First National Bank Building,
Versailles, Missouri.

Dear Mr. Marr:

This department is in receipt of your letter of January 3rd, requesting an opinion of this department as to the following:

"The question has been raised by the probate judge of our county as to how far he can go in making a report or finding in his records on each estate of every citizen of Morgan County, Mo., in regards to an inheritance tax. He requested that I get an opinion on the question.

In each case he makes a charge of \$5.00 for writing a finding in his records that there is no tax due.

For instance suppose that a widow woman makes application for a refusal of letters of administration on the estate of her deceased husband on the grounds that there is not sufficient estate to exceed the rights of the widow in her bounties and allowances, and the probate court so orders the denial of letters of administration. Does the probate judge have a right to enter a records making a finding of no inheritance tax due, and charge \$5.00 for the record?

In another instance the widow appeared before the probate court to prove and probate the will of her husband. She had five children, and the estate amounted, to between three and four thousand dollars. The exemptions amounted to \$45,000.00 in regard to the inheritance tax. There was no tax due the state. The widow after probating the will did not apply for letters testamentary because, all the debts were paid, nobody owed the deceased, all the heirs were of age, and had entered into an agreement to make distribution according to the will, and the widow and the heirs did not want any administration on the estate. Part of the estate consisted of real estate. The probate judge was of the opinion that he had a right to make a finding in his record that there was no inheritance tax due, and charge

the widow and the heirs \$5.00 for the report. These German people refused to pay the amount asked for the finding. The probate Judge wanted to make the estate pay the \$5.00. Is it his right or duty to make up this record and charge \$5.00?

In another instance, the deceased died intestate. The tangible property such as real estate does not exceed the exemptions allowed the survivors. No administration was had and there was no will. There is no evidence to show that the intestate left sufficient property to make an inheritance tax. Has the probate judge any authority to force an investigation, run up costs by appointing an appraiser, and on his report of no tax due, make a finding in the probate record of no tax due, and charge \$5.00? "

Section 11782 R. S. No. 1929 is the governing statute relative to fees allowable to judges of probate courts for their services. This section is quite lengthy and it would serve no purpose in this opinion to set it out verbatim. It is sufficient to say that the only fees therein set out that could be at all applicable to the situation presented by you is the part of the section allowing to the probate court a fee of 2½ per cent of all inheritance taxes assessed, the fee to be allowed for extra work and duties in looking after and supervising the estates in his court.

It is, of course, axiomatic that no officer is entitled to fees of any kind unless provided for by statute and the law conferring such right must be strictly construed. Where the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim for compensation therefor. This principle of law is clearly enunciated in the early case of *State ex rel v. Adams*, 172 Mo. 1, wherein the court said:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer, for it is well settled law that his right to compensation for the discharge of the official duties is purely a creature of statute and that the statute which is claimed to confer such right must be strictly construed."

A mere application of these principles to the statute here involved determines the question presented by you. No provision is therein found giving any compensation whatever to the probate court for writing a finding in his records that there is no tax due in an estate. A charge of \$5.00 for making this finding is, in our opinion, not only unwarranted but unconscionable. If that practice were followed in every county in the state, the result would be that the probate courts would receive \$5.00 whenever a person died, regardless

of whether that person had property sufficient for administration or not. That this is wholly unauthorized is too clear for any question and it is the opinion of this department that the practice of making this charge should be stopped immediately.

Respectfully submitted,

JOHN W. HOFFMAN, JR., Assistant
Attorney General.

JWH: G

APPROVED

J E Taylor

Acting Attorney General