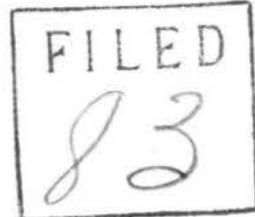


PROBATE JUDGES: Under House Committee Substitute for Senate Bill No. 4, Probate Judges may at any time collect excess fees above their salary after they have paid fees into the county treasury equal to the amount of their annual salary.

October 25, 1943



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: W. A. Holloway,
Chief Clerk

Dear Mr. Smith:

The Attorney-General wishes to acknowledge receipt of your letter of October 18th in which you request an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"At the recent meeting of the Probate Judges Association of Missouri the Judges in their convention requested us to obtain an opinion from your office on the question concerning the method and time of the Probate Judges retaining fees collected by them in excess of the annual compensation allowed under the provisions of House Committee Substitute for Senate Bill No. 4.

"To clarify the question, we will use as an example a Judge in the last bracket, in a County with a population of more than 17,500 and less than 19,000, wherein his annual salary paid by the County would be \$2400.00, then the law provides that if the yearly sum of fees earned and collected by virtue of the office shall exceed the amount which the Judge would be entitled to receive under his salary, then such Judge shall be entitled to retain the excess subject to the limitations set out in Section 13404, R. S. Missouri, 1939, and the

County Court shall draw a warrant or warrants upon the County Treasurer in favor of such Judge for such excess fees.' The question involved is, 'can the County Court begin to draw a warrant to the Probate Judge for fees turned in to the County just as soon as the amount turned in exceeds the salary limitation, or will it be necessary for the Judge to wait until the end of the year.' The Judges feel that the language used in the law, 'such Judge shall be entitled to retain' and 'the County Court shall draw a warrant or warrants', would indicate that as soon as the excess collections begin to come into the Treasury that the County would then draw them one warrant for their regular monthly compensation and another warrant to return to them the excess fees.

"We would like your opinion on this matter as there are to be furnished the Judges in these counties other matters, and we would like to enclose this opinion at that time."

Since this request is based upon a construction of House Committee Substitute for Senate Bill No. 4, we first wish to cite such legislation, which was approved by the Governor on August 5, 1943. The bill provides as follows:

"The Judges of the Probate Courts in counties which now have or may hereafter have a population of less than 19,000 inhabitants shall receive for their services annually, to be paid out of the County Treasury in equal monthly installments at the end of each month by a warrant drawn by the County Court upon the County Treasury minimum salaries as follows: In counties having 10,000 inhabitants or less, the sum of \$750.00; in counties having 10,000 inhabitants and less than 15,000, the sum of \$1200.00; in counties having more

than 15,000 inhabitants and less than 17,500, the sum of \$2,000.00; and in counties having more than 17,500 inhabitants and less than 19,000, the sum of \$2,400.00; but should the yearly sum of fees earned and collected by any Probate Judge of any such county, and his clerk or clerks, by virtue of the office, exceed the amount which such Judge would be entitled to receive by reason of the population of said county as aforesaid, then such judge shall be entitled to retain the excess subject to the limitations set out in Section 13404 of Article 2, Chapter 99, Revised Statutes of Missouri, 1939, and the County Court shall draw a warrant or warrants upon the County Treasurer in favor of such Judge for such excess fees. It is further provided that all Probate Judges in such counties shall at the end of each and every month after this act shall take effect, make and file with the County Clerk a report of all fees actually collected by him or his clerk during the month, except fees earned and collected for the solemnization of marriages and the hearing and determining of inheritance tax matters, together with a report of all such fees earned during the month but not yet collected, and that he shall at the end of each month pay over to the County Treasurer all monies collected by him or his clerk during the month which are required to be shown in the monthly report as above provided, taking duplicate receipts therefor, one of which shall be filed with the County Clerk, and every such Probate Judge shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the County Treasury as herein provided."

Your request necessarily calls to our attention the exact amount which a Probate Judge may collect for his services. It will be noted that the Judge has authority, under the above statute, to retain the excess fees which he collects "subject

to the limitations set out in Section 13404 of Article 2, Chapter 99, R. S. Mo., 1939." The limitation spoken of should be called to your attention. So, consequently, we wish to cite you that part of Section 13404, supra, which relates to the compensation of the Judges. This is 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 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 a sum equal to the annual compensation in the aggregate from all sources and for all duties by virtue of the office, except the \$1,200.00 allowed for expenses when holding circuit court in other counties, provided by law for a judge of the circuit court having jurisdiction in such county, * * *"

After a study of the above statute in conjunction with the instant bill, it would appear that a Probate Judge is entitled to his salary plus any additional fees in excess of the amount necessary to offset the amount of his salary, with the limitation placed on such excess that it shall not exceed the salary of the Circuit Judge of his county.

With this in view, we will now proceed to the principal question, i. e., when the Probate Judge may collect such additional fees. There are three constructions which ought to be suggested in answer to the question. These are, (1) at the end of each month, (2) at such time as the Probate Judge has paid into the treasury an amount of fees equal to his salary, or (3) at the end of the year. Before discussing these three ideas, we would like to offer our view on the question as to whether the salary of the Probate Judge is to be computed on an annual or on a monthly basis. It will be noted that the instant legislation provides that the Probate Judges "shall receive for their services annually * * *." This, we feel, justifies us in saying that these salaries are figured on an annual basis even though the bill provides that they are to be paid in twelve "equal monthly installments." It is our opinion that the latter provision was incorporated in the legislation merely as a convenience to the officers in allowing

them to be paid monthly. See State ex rel. Harvey v. Linville et al., 300 S. W. 1066, 318 Mo. 698. This observation leads us to the conclusion that where the bill provides that if fees exceed the amount of a Probate Judge's salary, it means his annual, instead of his monthly salary.

Now, taking the first view as set out in the preceding paragraph, we wish to offer an example to explain our construction of this statute. Let us say that a Probate Judge is entitled, under a population classification, to \$2400.00 per year as salary - under the provisions of the instant bill, he shall be paid the sum of \$200.00 per month or one-twelfth his annual salary. Suppose, in January he collects fees in the sum of \$250.00, which, of course, is \$50.00 in excess of his monthly installment or salary. Then, can we say that at the end of that month he is entitled to that \$50.00? We think not. If his salary was figured on a monthly basis, he would be entitled to this excess, but where it is figured annually he would not. It would be possible that after January he might not collect more than an average of \$100.00 per month in fees, or a total of \$1,100.00. Should he have been paid the \$50.00 excess in January, then he would at the end of the year have drawn \$2450.00 - \$50.00 plus his fixed salary - when, in fact, he would have collected only \$1,350.00, or less than his fixed salary. Under the provisions of this bill we do not feel he could collect the excess of fees over his monthly salary installment.

We now will consider classification two aforesaid, which would permit a probate judge to draw fees which exceed his yearly salary after he has deposited in the county treasury an amount equal to his salary. Using the same example as above, can a Probate Judge, after earning, collecting and depositing with the County Treasurer \$2,400.00 in fees, which is the amount equal to his yearly salary, make a demand and collect an amount equal to the excess fees over the \$2400.00? We believe that he can. It appears that this statute tries to assure the counties that when fees are collected by a Probate Judge, they will be paid into the treasury in an amount equal to the judge's salary. After such condition has been met, any other fees deposited are the property of the Probate Judge, up to the limitation discussed supra. Since these fees are the property of the Probate Judge, we feel that he should be allowed to draw these amounts whenever he has fulfilled the condition mentioned above.

These views necessarily bring us to the third classification above, i. e., as to the Probate Judge being compelled to wait until the end of the year before he is entitled to draw such excess fees. It seems to us that since these fees are his, up to the maximum amount set out in the statutes, there would be no reason why he should be forced to wait until the end of the year to collect them. The County Court has sufficient records to inform it as to the amount that has been collected and deposited, so that, in case the fees exceed the maximum amount, it can claim such fees on the part of the county. The means of keeping these records is provided in this bill when provision is made for the filing of monthly reports by the Probate Judge.

The purpose of statutory construction is to determine legislative intent. See *Thompson v. City of Lamar*, 17 S. W. (2d) 960, 322 Mo. 514; *State v. Toombs*, 25 S. W. (2d) 101, 324 Mo. 819; *State ex rel. American Asphalt Corp., v. Trimble*, 44 S. W. (2d) 1103, 329 Mo. 495. In construing the instant statute we have attempted to arrive at what we feel is the legislative intent. It has also been held that a statute should not be construed so as to make it unreasonable, where there can be a reasonable construction. See *State ex rel. Public Service Company of St. Louis v. Public Service Commission*, 34 S. W. 486, 326 Mo. 1169. Further, the courts have held that a statute will not be so construed as to require an impossibility or lead to absurd results if susceptible of reasonable interpretation. *State v. Irvine*, 72 S. W. (2d) 96, 335 Mo. 261, 93 A. L. R. 232.

Following the rules of construction above, we feel that we have adopted the only reasonable construction of this bill in holding that a Probate Judge may make demand and be entitled to all excess fees collected by him at any time after sufficient fees have been deposited in the treasury by him to offset the amount of his salary for that year, and that he shall not be compelled to wait until the end of the year to collect such excess fees, if any. In adopting such reasonable construction, it would appear that we have arrived at the intention of the Legislature.

We further think it proper to call attention to the fact that this instant legislation should go into effect ninety days after the adjournment of the Legislature, which would be November 21, 1943. But since that date falls on a Sunday, the effective day is set over one day, that is, until November 22,

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1943. As a result thereof, there will be a short period of time between such date and December 31, 1943, when the Probate Judges can take advantage of this bill. However, due to the fact that the counties have not set up any provision in 1943 in their budgets for the payment of these salaries, it might result in the failure of the Judges to collect such remuneration, unless there is a surplus in the proper classification. This office has recently rendered an opinion to the effect that if there is a surplus in the anticipated revenue for the year of 1943, over and above all necessary charges, a warrant for such unpaid salary (Probate Judge's) may be issued payable out of Class 4, 5 or 6, if such surplus exists in either of these classes; or unclaimed balances in Classes 1, 2 and 3 may be transferred to Class 5 to pay same.

Conclusion

Therefore, it is the opinion of this department that, after sufficient fees have been earned and collected and deposited in the treasury by the Probate Judges to offset the amount of their annual salary, the Probate Judges are then entitled to any excess fees over and above such amount, up to limitation as set on the salary by Section 13404, R. S. Mo. 1939, set out above. And they shall be entitled to demand and collect such fees at any time after the amount equal to their salary has been paid in. This opinion, of course, is limited to the construction of House Committee Substitute for Senate Bill No. 4 and the classes of counties named therein.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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