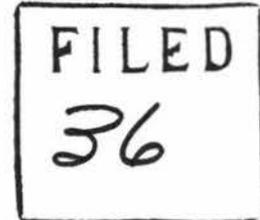


PROBATE JUDGE:

A probate judge may not collect fees for hearing and determining inheritance tax matters. Probate judges no longer have the power to solemnize marriages.

June 9, 1950

Mr. Sam Hackney
Probate Judge of Barton County
Lamar, Missouri



Dear Sir:

This office is in receipt of your recent request for an official opinion. You thus state your request:

"I wish an opinion on the following matter involving two sections of the statutes in which there seems to be a conflict:

"Section 13404 as last amended Laws 1947, volume 2, page 356, provides that in counties having 30,000 inhabitants or less the probate judge or clerk shall, at the end of each month, file with the director of revenue a written report verified by affidavit, showing all fees collected during such month and the same shall be paid over to the director of revenue to be deposited by him with the state treasurer in the "magistrate fund".

"Section 13404A as amended Laws 1943, page 868, provides that all probate judges in counties of less than 19,000 inhabitants shall, at the end of each month, 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 he shall, at the end of each month, pay over to the county treasurer all monies

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collected by him or his clerk, taking duplicate receipts therefor.'

"The conflict between these two sections is apparent. Section 13404A seems to say that the probate judge may withhold fees for solemnizing marriages and fees for hearing and determining inheritance tax matters, which would be the 2 1/2% of tax assessed. Section 13404 makes no exception but requires that all fees be reported to and paid over to the director of revenue.

"Now I wish to know which one of these two Sections applies to me. (Barton County has less than 19,000 population.) As there is an apparent conflict between 13404 as last amended in 1947 and 13404A as last amended in 1943, I wish to know whether I may withhold fees for hearing and determining inheritance tax matters and for solemnizing marriages, or whether these fees should all be paid over to the Director of Revenue."

Section 13404a, referred to by you above, was repealed by Senate Bill No. 1143, of the 65th General Assembly. Section 13404, referred to by you above, states in regard to fees for inheritance tax matters:

"For supervising all estate in each court and having appraised such of said estates as may be liable for taxes under the state inheritance tax law, in addition to the fees applicable as hereinbefore provided, a fee of two and one-half cent of all such inheritance taxes finally assessed and paid on property assessed through the respective courts shall be charged, the same to be collected by said judges from the person whose duty it is to pay such tax: Provided, in all estates in which the state treasurer (director of revenue) or the executor, administrator or trustee in charge thereof, shall be required under the provisions of the inheritance tax law to refund to the person entitled thereto any inheritance tax collected by them, the state or county receiving same shall refund to the person entitled thereto out of the two and one-half per cent fee on such tax the proportional part thereof to which any

Mr. Sam Hackeny

such person may be entitled to a refund.

* * *

"In counties now or hereafter having 30,000 inhabitants or less, the judge or clerk of the court shall, at the end of each month, file with the director of revenue a written report, verified by his affidavit specifying the name and court number of each estate in which fees were paid during such month and at the same time pay over to the director of revenue, to be deposited by him with the state treasurer in the 'magistrate fund,' all money collected by him or his clerk as fees, taking two receipts therefor, one of which he shall immediately file with the state treasurer. * * *"

From the above quoted portion of Section 13404, Laws Missouri 1947, it is clear that a probate judge may not retain fees earned and collected by him for determining inheritance tax matters.

In regard to retaining fees for solemnizing marriages we direct your attention to Laws of Missouri 1945, page 1145, (now Section 3363, Mo.R.S.A. Pocket Part, 1939) which states:

"Marriages may be solemnized by any licensed or ordained preacher of the gospel, who is a citizen of the United States, or who is a resident of this state and a pastor of any church in this state, or by any judge of a court of record, except judges of the probate courts."

Since a probate judge has, since 1945, been unable to perform a marriage ceremony, the question of fees does not arise.

CONCLUSION

It is the opinion of this department that a probate judge may not collect fees for hearing and determining inheritance tax matters. Probate judges no longer have the power to solemnize marriages.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. Taylor
Attorney General