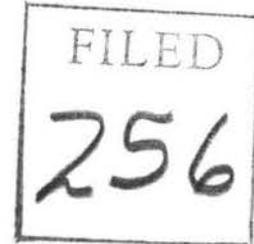


OPINION NO. 256
Answer by Letter-Nowotny

October 30, 1967



Honorable Daniel R. Ferry
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Mr. Ferry:

This is in answer to your request for an opinion on four questions concerning Probate Court fees.

Your first question reads as follows:

"(1) If, pursuant to R.S.Mo. 145.150.3, the Probate Court determines the inheritance tax, (instead of appointing an appraiser for that purpose), is the Probate Judge entitled to a fee (such as is authorized for an appraiser by Section 145.190) or other special compensation (other than 2½% of the tax as provided in Section 145.150) for his services in such matter?"

Section 145.150, RSMo 1959, provides that the Probate Court has jurisdiction to determine the amount of the inheritance tax. The Probate Court may, before determining the tax, appoint an appraiser to appraise and fix the clear market value of any property subject to tax. If an appraiser is appointed he is entitled to a reasonable fee. Section 145.190, RSMo 1959.

Enclosed is a copy of an Attorney General opinion, dated February 15, 1937, issued to the Honorable E. L. Colton, which answers your question based on the predecessors of Sections 145.150 and 145.190, supra. That opinion, to which we still adhere, is that the Probate Court is not entitled to the appraiser's fee when the court does not appoint an appraiser.

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Your second and third questions reads as follows:

"(2) If the answer to question (1) above is affirmative, how or by what standard does the Probate Court fix the amount of such fee or compensation?"

"(3) If the answer to question (1) above is affirmative, is the fee or compensation required by Missouri Constitution Article V Section 24 to be paid monthly into the state treasury or to the county paying the judge's salary?"

Since the answer to your first question is negative it is not necessary to discuss your second and third questions.

Your fourth question reads as follows:

"(4) If the answer to question (1) above is negative, and if a Probate Judge has charged and received such a fee or compensation and it has not been paid into the state treasury or county, what restitution, or action, if any, is indicated or required?"

Enclosed is a copy of Attorney General Opinion No. 92, dated August 4, 1953, issued to the Honorable Raymond H. Vogel holding that a county is entitled to recover money illegally collected under color of office by a county recorder. It is our opinion that if a Probate Judge, claiming authority under Section 145.510, supra, illegally charges and receives a fee that this is done under color of his office and an action may be brought to recover the fee. The question then is whether the state or the county may bring such an action.

We note that Vernon County has less than thirty thousand inhabitants. Thus, Section 483.580, RSMo Supp. 1965, is applicable. This section provides for the collection of fees in Probate Courts. Subsection 3 of this section provides in part that:

"3. In counties now or hereafter having thirty thousand 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 moneys collected

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by him or his clerk as fees, taking two receipts therefor, one of which he shall immediately file with the state treasurer. * * * "

Thus, fees required to be collected in the Vernon County Probate Court belong to the state. Therefore, the state and not the county may bring an action to recover fees collected under color of office.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

WWN:maw

Enclosures - Opinion No. 18
2/15/37 - Colton

Opinion No. 92
8/4/53 - Vogel