

PROBATE JUDGES: Should collect fees under present law until House Committee Substitute for Senate Bill 4 becomes effective.

September 20, 1943

9/23



Hon. Paul S. Hollenbeck
Judge of the Probate Court
Marion County
Vienna, Missouri

Dear Judge Hollenbeck:

Under date of September 11, 1943, you wrote this office requesting an opinion as follows:

"Am in receipt of your letter of September 10, 1943, in which you enclosed an opinion of Hon. Leo A. Politte in regard to Senate Bill No. 4. This clarifies several points of the bill but would like further light on one point.

"On page 4, in paragraph 5, the opinion states that after the effective date of the bill all accountable fees collected during such month must be paid over to the county. My question is this: Can a probate judge collect and retain all fees earned and accrued in his office before November 22nd, 1943 and retain them? In other words, can a judge collect earned fees at this time and retain them instead of waiting until a later date (after the effective date of the bill) and collecting such fees earned prior to said effective date and having to pay such fees over to the county?

"I assume, of course, that in fees collected in the month of November, only such fees as are collected after the 22nd will have to be accounted for."

House Committee Substitute for Senate Bill No. 4 can have no effect until the date on which it becomes effective under the statutes and the Constitution. Your attention is directed to the following brief quotation from the case of State ex rel. Bauer v. Edwards et al., 136 Mo. 360, l. c. 368:

"The revised law, being the later, repealed such parts of the act of 1889 as were inconsistent with it. State ex rel. v. Heidorn, 74 Mo. 411. The act of 1889 provided for a joint assessment by the county and city assessors, and the revised law required the assessment made by the county assessor to be taken. These provisions are irreconcilably inconsistent and the former was repealed by the latter.

"But the repeal was not effected until the revised law went into effect, November 1, 1889. The act of 1889 was, therefore, in force from its approval, May 20, until its repeal November 1, 1889."

Your attention is also directed to the following quotation from the case of State ex rel. Brunjes v. Bockelman, 240 S. W. 209, l. c. 212:

"The real issue in this case is to determine from what exact date such a statute speaks. In our judgment it speaks as of the date it becomes effective and not otherwise.

"In Rice v. Ruddiman, 10 Mich. loc. cit. 135, Christiancy, J., said:

"It is very clear the act did not take effect till 90 days after the end of the session. But we do not think the act was therefore void as to the election provided for. It took effect in May, 1859, and must be understood as beginning to speak at the moment when it

became a law, and not before. It must have the same construction as if passed on the day when it took effect and directed by a two-thirds vote to take immediate effect. "April next" must therefore be understood as April, 1860, being the next April after the act took effect. Any other construction leads to absurdity, and imputes to the Legislature the enactment of a farce under all the solemn forms of legislation.'

"The law discussed was passed February 4, 1859, and has not been passed with an emergency. Such a law became effective in 90 days.

"In *Price v. Hopkins*, 13 Mich. loc. cit. 327, Cooley, J., said:

"It was held in *Rice v. Ruddiman*, 10 Mich. 125, that a statute must be understood as beginning to speak the moment it takes effect, and not before; and this decision is in harmony with that in *Charles v. Lamberson*, 1 Clark (Iowa) 442, where a statute for the protection of homesteads, which made them liable for all debts contracted prior to its passage, was held to mean, prior to its taking effect, although that period was some time after its enactment.'

"Even notice cannot and will not be taken of such statutes until by their terms they become effective. *Price v. Hopkins*, supra; *Sammis v. Bennett*, 32 Fla. loc. cit. 460, 14 South, 90, 22 L. R. A. 48."

While the statutes under consideration in those cases were not salary acts, the same principles apply and the new law would not operate as a repeal of the old law until its effective date.

Conclusion

Until House Committee Substitute for Senate Bill No. 4, enacted by the 62nd General Assembly, becomes effective, fees will be charged and collected when they become due by probate judges in accordance with the law in existence at this date.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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