PROBATE COURT: Probate Court may not charge fees for
FEES: denial of letters in estates consisting
DENIAL OF LETTERS: wholly of social security funds and in which the assets are less than $400.00.

Probate Court may charge fees to individuals in other estates for denial of letters.

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January 8, 1943

FILED
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Hon. Jos. V. Pitts
Judge and Ex-officio Clerk
Douglas County
Ava, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of probate fees in estates which contain assets consisting of social security benefit funds and estates not containing such security benefit funds in which letters of administration are denied.

The two sections of the law which pertain to your inquiry were passed in 1941.

Section 2, Article 1, Chapter 1, R. S. Mo. 1939, as amended in 1941 (Laws of Missouri 1941, page 289) provides as follows:

> "The probate court, or judge thereof in vacation, in its or his discretion, may refuse to grant letters of administration in the following cases: first, when the estate of the deceased is not greater in amount than is allowed by law as the absolute property of the widower, widow or minor children under the age of eighteen years: second, when the estate of the deceased does not exceed one hundred ($100.00) dollars and there is no widower,

widow or children under the age of eighteen years, any creditor of the estate may apply for refusal of letters by giving bond in the sum of one hundred ($100.00) dollars, said bond to be approved by the probate court or judge thereof in vacation, conditioned upon such creditor obligating himself to pay, so far as the assets of the estate will permit, the debts of the deceased in the order of their preference. Proof may be allowed by or on behalf of such widower, widow, minor children or creditor before the probate court or judge thereof of the value and nature of such estate, and if such court or judge shall be satisfied that no estate will be left after allowing to the widower, widow or minor children their absolute property, or that the estate does not exceed one hundred ($100.00) dollars when application is made by a creditor, the court or judge may order that no letters of administration shall be issued on such estate, unless, upon the application of other creditors or parties interested, the existence of other or further property be shown. And after the making of such order, and until such time as the same may be revoked, such widower, widow, minor children, or creditor, in the same manner and with the same effect as if he or she had been appointed and qualified as executor or executrix of such estate; if minor children under the age of eighteen years, in the same manner and with the same effect as now provided by law for proceedings in court by infants in bringing suit; provided also, that the widower, widow or minor children under the age of eighteen years may retain the property belonging to such estate and the creditor shall apply the proceeds thereof to debts of the estate in the order in which demands against the estate of deceased persons

> are now classified and preferred by law. Provided further, that any person who has paid the funeral expenses or other debts of deceased shall be deemed a creditor for the purpose of making application for the refusal of letters of administration under this section and be subrogated to the rights of such original creditor."
>
> (Underscoring ours.)

The underscored portions of this section are the amendments to the old act. This act was approved July 28th, 1941.

Section 9417 of the Social Security Act, Article 1, Chapter 52, R. S. Mo. 1939, as amended in 1941 (Laws of Missouri 1941, page 647) reads as follows:

> "* * * Whenever any recipient shall have died after the issuance of a benefit check to him, or on or after the date upon which said benefit check was due and payable to him, and before the same is endorsed or presented for payment by the recipient, the Probate Court of the county in which said recipient resided at the time of his death shall, on the filing of an affidavit by one of the next of kin, or creditor of said deceased recipient, and upon the court being satisfied as to the correctness of said affidavit, make an order authorizing and directing such next of kin, or creditor, to endorse and collect said check, which shall be paid upon presentation with a certified copy of said order attached to the check and the proceeds of which shall be applied upon the funeral expenses and the debts of said decedent, duly approved by the Probate Court, and it shall not be necessary that an administrator

> be appointed for the estate of said decedent in order to collect said benefit check. No costs shall be charged in said proceedings. Such affidavit filed by one of the next of kin, or creditor, shall state the name of the deceased recipient, the date of his death, the amount and number of such benefit check, the funeral expenses and debts owed by the decedent, and whether said decedent had any estate other than said unpaid benefit check and, in the event said decedent had an estate of a value of more than $400.00 the provisions of this Act shall not apply and the estate of the decedent shall be administered upon in the same manner as estates of other deceased persons. * * * * * * * * * * * * * * * *"

This act was approved July 30, 1941. A comparison of these two sections reveals that they deal with estates of deceased persons which may be considered as one general subject matter. However, it will be noted that Section 9417, supra, as amended, deals only with estates in which there are social security benefit funds as assets. This would be classed as a special class of assets. This act was approved two days later than Section 2, supra, of the administrative law. The two sections might appear to be in conflict in part. However, the following rules of construction should be applied in such a case.

In State ex rel. McDowell v. Smith, 67 S. W. (2d) 50, 57, the court announced this rule of construction:

> "'It is the established rule of construction that the law does not favor repeal by implication but that where there are two or more provisions relating to the same subject matter they must, if possible, be construed so as

> to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions.' * * * * * * * * * * * * *"

Also, in State ex rel. v. Brown, 68 S. W. (2d) 55, 59, another rule of construction which might be applicable here was announced as follows:

> "* * * In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of , the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' * * * * * * * *"

Applying these rules of construction to these two statutes, they should be considered together and both of them be construed as being in full force and effect, but

if there is any repugnancy in their provisions, then the special act, that is, Section 9417, should prevail over the general act, Section 2, supra.

From an examination of Section 9417 as amended, it will be noted that the purpose of this act was to relieve the old age security funds from any probate costs which might be incurred in connection with the administration and disposition of social security benefit funds which may be due to recipients of such funds. This section does contain the clause that its provisions shall not apply in assets which have a value in excess of $400.00, but it does not attempt to include estates such as are mentioned in Section 2, supra, as amended, and which would not have as a part of their assets social security benefit funds.

Referring to Section 2, supra, of Article 1, Chapter 1, R. S. Mo. 1939, as amended, the underscored portions thereof being the amendments to the old law, it will be noted that this amendment was primarily for the purpose of permitting creditors of estates in which the assets are less than $100.00, and where there is no widower, widow or minor children under eighteen years of age, to apply for refusal of letters, and for such creditors to pay the debts of the estates out of the assets so far as they will go. We fail to find any provisions in said Section 2, supra, as amended, which would prevent the probate court from making statutory charges for its services.

However, if there be a widower, widow or minor children who survive, they are entitled to certain statutory allowances, which allowances come ahead of any probate court costs in cases where letters are denied, or, in cases where they are not denied. This statement is supported by the holding of the St. Louis Court of Appeals in the case of Estate of Ulrici v. Johnston, 177 Mo. App. 584, 590:

> "Woerner's Am. Law of Administration (2 Ed.), Sec. 86, pp. 176, 177, says: 'The right of the widow to the money or property allowed for her and her family's temporary support is held in some States to be absolute, and to vest at once upon

> the husband's death' and cites in the note in support of the text Hastings v. Myers, 21 Mo. 519; McFarland v. Base, 24 Mo. 156, holding that it passes at once upon the husband's death, discharged of the lien of the debts, and may be assigned by her by deed even without consideration, citing Cummings v. Cummings, 51 Mo. 261. In the more recent case of Waters v. Herboth, 178 Mo. 166, 172, 77 S. W. 305, the Supreme Court says that these sections of the statutes--that is, sections 114, 115, 116--give certain articles and $400 to the widow. Moreover, the court says, 'Those sections were not designed to affect the final distribution, but the idea was to allow the widow to have those articles in the beginning. They were to be separated from the estate that was to be administered, to form no part of it, neither for the creditors nor the distributees; they were to be given to the widow in the first place, and it was only what was left after those articles were given to the widow that was to be treated as the estate to be administered.' (Italics are our own.) This language of the Supreme Court is conclusive to the effect that the absolute allowance to the widow became her property and formed no part of the estate to be charged with expenses of whatever kind. * * * * * * * * * * * * *"

Also, in speaking of the allowance for the year's support, the court further said, at l. c. 591, 592:

> "* * * In this view, the widow's allowance is to be preserved entire for her

> use and support, and this, too, first from the expense of administration. Section 10 of the Administration Law (see Revised Statutes 1909) obviously contemplates this, for it provides that if the estate is no greater in amount than is allowed by law as the absolute property of the widow, administration shall be dispensed with entirely. It is certain that, under the established rule of decision in this State, the widow's allowances are regarded as her absolute property and not to be considered as assets of the estate. * * * * *
>
> "Touching this question an accepted authority of high repute says, 'Since the property allowed to the widow is not, in most States, treated as assets of the estate, it would seem to follow that the widow is entitled to it in preference to creditors of any kind, whether for ordinary debts of the decedent, expenses of last illness, or even funeral expenses and charges for settling the estate.' * * * * * * * * * * * * * * "

From these statements it will be seen that the statutory allowances take priority over any charges for settling the estate.

In connection with the charge for granting or refusing letters, we are enclosing for your information copy of opinion to Mrs. Jessie B. Harrison, Acting Probate Judge of Dunklin County, Kennett, Missouri, dated February 20, 1942.

CONCLUSION

From the above we conclude, in estates where letters of administration are denied, that:

1. If the estate does not consist of assets in excess of the amount allowed by statute to the widower, widow, or minor children, then no probate costs may be taxed against it.

2. If the estate consists only of social security benefit funds and is valued at $400.00 or less, then no probate fees may be charged against it.

3. If the estate consists of assets including social security benefit funds valued in excess of $400.00, then probate fees may be charged against the estate subject to statutory allowances.

4. If the assets of the estate amount to less than $400.00 and there is no widower, widow or minor children, and if the estate includes assets other than social security benefit funds, then the probate court expenses may be charged against it, provided no part of such charges may be imposed on any social security benefit funds in such estate.

5. No probate court charges for services may be made in estates consisting of social security benefit funds only and which are valued at less than $400.00.

6. The probate court may make usual fee charges against individuals who request denial of letters in any estate which contains assets other than social security benefit funds, or, estates containing social security benefit funds valued at more than $400.00.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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