

PROBATE : Do not have to account for acknowledgments
JUDGES' : and affidavits where probate seal is used,
FEES : if fees therefor not chargeable against
 : estate pending in his court.



February 25, 1944

Honorable Joseph V. Pitts
Probate Judge
Douglas County,
Ava, Missouri

Dear Judge Pitts:

This office is in receipt of your letter of recent date in which you request an opinion, the full text of which reads as follows:

"Friend Morris: Your opinion on 'Probate Fees to be collected and reported to County Court, was very clear to me and I appreciated it.

"This A. M. I was called in to our County Court and the Presiding Judge, J. W. Vinson advised me that the 'Auditors', when here told him that I should account to & pay over to the County All fees charged, wherein the 'Probate Judge's SEAL was used.

"I do write deeds- Deeds of Trust--Chattel Mtges. Assign Car Titles, swear folk to affidavits and use the Probate 'SEAL', attesting. (In my letter I quoted to you the views of Ed Hill & Walter Black)

"I have in my library the SW 2nd. Series and have again reread your Citation, i. e. 136 SW (2nd) 282. (I find that I had marked this decision in my first study of this question, after the Auditor told me 'Technically I could be charged up with work done under the Probate Seal- And this was my reason for writing to you.

"To my mind Page #8 of your opinion 'Those acts for which the officer shall make a charge have been ENUMERATED in the Statute, and we conclude that the Officer is under the duty imposed by his Office to make a charge and account for same.'

"In your conclusion--Clerifying, you say:-
'That the Specific fee for each service performed
is definately set out and provided for by Statute'

"I want to avoid litigation with my County and
I kindly ask that you give me your Opinion on the
Use of the 'Probate Seal' on Ack. to deeds, T.D.
C. M. & Affidavits.

"Should I account for all fees taken in wherein
I use the Probate Seal?

"I will appreciate very much this consideration."

Before proceeding with the discussion, we again
call attention to our previous opinion of January 6, 1944,
in which we sought to dispose of this matter. In order
to further clarify it and to facilitate matters we include
a copy.

Sections 13404 and 13404a, R. S. Missouri, 1939,
concern themselves with fees for Judges of Probate. We
merely cite them for convenience. The extreme length
of the text prevents a detailed examination here.

Section 2447, R. S. Missouri, 1939 reads as follows:

"Every probate court shall have a seal of office,
of some suitable device, the expense of which,
and the necessary expense incurred by said court
for books, stationery, furniture, fuel and other
nessaries, shall be paid by the County."

Section 2436, R. S. Missouri, 1939, establishes
our probate courts and says:

"A probate court, which shall be a court of record,
and consist of one judge, is hereby established
in the city of St. Louis, and in every county in
this state."

The fees connected with the office of probate judge
divide themselves into three classes. We propose to
discuss those provided for by statute and the others
which may come to this officer.

1. Certain fees are provided for and a charge authorized under the statutes. Section 13404, R. S. Missouri, 1939, enumerates the acts for which a charge must be made and the amount is definitely stated. Section 13404a, R. S. Missouri, 1939, should be read in connection with this discussion. In these portions of the statutes the Legislature has expressly provided for the rendition of service by the officer and an appropriate charge therefor. The official acts of this officer must be paid for according to the schedule as set out. Fees of this officer must be accounted for in strict compliance with the legislative intent. It is important to note that the Judge, the County Court, the estate, (or individual), are all involved in the collection, accounting and distribution of the funds coming into the hands of the probate judge. The duty imposed upon him by our laws is plain and exactly defined for the benefit of all. For all of the official acts mentioned there must be an appropriate charge and prompt accounting. Only two exceptions are made where the judge may collect a fee and retain it without accounting for same; these constitute the subject matter of our second paragraph.

2. (a) Fees for the solemnization of marriages, and
- (b) Fees for the hearing of inheritance tax matters,

may be collected by the officer and he need not account for same. It is sufficient to say on this point, that our Legislature intended to make an exception. Having made it there need be no further discussion.

3. The third topic of discussion concerns itself with the fees received by the officer for services rendered for acknowledgment of deeds, assignments, writing of deeds of trust, making chattle mortgages and preparation of affidavits. This service concerns just two people, the judge and the party he has accommodated. These services have no connection with any estate or matter connected with his office. Our statutes do not specifically say he shall make a charge for such service, and make an accounting therefor and for that reason we conclude that, since not prohibited the acts may be performed for a fee and no accounting need be made to the county court. In this situation the act performed is purely a matter of accommodation on the part of the judge. He is not required to perform these acts and

Hon. Jos. V. Pitts

-4-

Feb. 25, 1944

should he decline to perform no remedy is available to compel him so to do. Since no express declaration is made in the nature of a prohibition, we conclude that he may perform the act, charge a fee and need not account for same.

CONCLUSION.

From the reading of our statutes and from a previous opinion already submitted, it is therefore, the conclusion of this office that a probate judge shall account for those fees provided for in the statute. Fees received from acknowledgment of instruments, affidavits, etc., not involved in any estate under his jurisdiction, are not required to be accounted for under the statutes, and may be retained by the probate judge. The fact that the probate judge uses the seal of his office is not the determining factor in the question as to whether he must account for this class of fees received by him while in office.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney General

LIM:LeC

APPROVED:

ROY McKITTRICK
Attorney General

Encl.