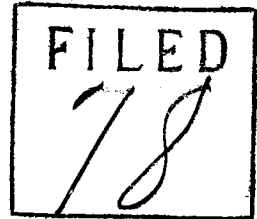


PROBATE JUDGES: Disposition to be made of fees earned prior to but collected subsequent to effective date of Sec. 13404a, Laws of 1943, page 868.

January 30, 1945



Honorable C. S. Saltsman  
Judge, Probate Court  
Steelville, Missouri

Dear Sir:

Reference is made to your letter of January 11, 1945, requesting an opinion of this office, and reading as follows:

"The 1943 Legislature changed the laws affecting salaries and fees of the Probate Judge. Under the laws of 1943 at page 868, Probate Judges are to receive a salary of \$100.00 a month in counties such as Crawford County. The Session Acts provide that on and after the effect of that act, Probate Judges are required to remit to the county at the end of each month 'all fees collected by such Judge or Clerk'. The Session Acts do not provide for the disposition of fees that were earned by the Probate Judge before that act took effect. It is further provided that at the end of each year the Probate Judge file with the County Clerk an annual statement or recapitulation of all fees collected by his office for the year and that should such fees exceed the amount of \$1200.00 (in counties such as Crawford County) such excess fees would be paid to the Probate Judge, not to exceed the amount as provided for in Section 13404, Revised Statutes of 1939. This was done by my office and I remitted and paid to the county the sum of \$402.75 which amount represented fees that were earned during the year of 1943 before the Session

Acts above referred to took effect. It is my contention that these fees so earned at that time and before the taking effect of this act should not have been paid into the County Treasury and that they are, in fact, due me at this time."

And your subsequent communication or letter of January 25, 1945, supplying the following additional information:

"I am in receipt of your communication of January 24th relative to my inquiry regarding fees shown on my 1944 report filed with the County Clerk. You have asked whether or not these fees were collected before or after November 22, 1943, at which time the Acts of 1943 became effective. I wish to advise you that these fees were collected after that date. They were collected at the March and June terms of the Probate Court of Crawford County for the year 1944, but these fees were actually earned and were due before November 22, 1943, but were not paid because the administrators of the various estates had not yet made settlement. The work for which the fees were due was done after the September Term of the Probate Court of 1943 and before the effective date of the Acts of 1943 which changed the law with reference to salaries of the Probate Judge."

Your inquiry divides itself into two questions:

(1) Must the accrued fees due your office on the effective date of Section 13404a, Laws of 1943, page 868, be reported to the County Court, and when thereafter collected must such accrued fees be paid into the County Treasury in the same manner as fees earned and collected subsequent to the effective date of the statute?

(2) Is the Probate Judge entitled to receive such fees so paid into the County Treasury upon making final re-

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port to the County Court of fees earned and collected during the current year?

With respect to (1), we think a portion of an opinion dated August 30, 1943, directed to Honorable John M. Gallatin, President, Missouri Probate Judges' Association, Chillicothe, Missouri, is in point. We enclose herewith a copy of such opinion, together with a copy of an additional opinion, dated August 25, 1943, directed to Honorable Forrest Smith, State Auditor, Jefferson City, Missouri, to which some reference is made in the first mentioned opinion.

With respect to (2), we direct your attention to the specific provisions of Section 13404a, Laws of 1943, page 868. We quote:

" \* \* \* but should the yearly sum of fees earned and collected by any Probate Judge of any such county, and his clerk or clerks, by virtue of the office, exceed the amount which said Judge would be entitled to receive by reason of the population of said county as aforesaid, then such judge shall be entitled to retain the excess subject to the limitations set out in Section 13404 of Article 2, Chapter 99, Revised Statutes of Missouri, 1939, and the County Court shall draw a warrant or warrants upon the County Treasurer in favor of such Judge for such excess fees. \* \* \*"

#### CONCLUSION

We are, therefore, of the opinion that the fees earned prior to the effective date of Section 13404a, found in Laws of 1943, page 868, were properly reported to the County Court; that such fees when collected were properly paid into the County Treasury, and that you are now entitled to receive such fees by a warrant drawn by the County Court upon the County

Honorable C. S. Saltsman

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Treasurer, provided that the payment of such fees does not permit you to retain total fees in a year greater than the limitations found in Section 13404 of Article 2, Chapter 99, R. S. Missouri, 1939.

Respectfully submitted

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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HARRY H. KAY  
(Acting) Attorney General

WFB:HR