

No. 478

**FEES—CLERK OF COURT—ESTATES—
ADMINISTRATION**

Held: The Clerk of Court must collect a fee of five dollars at the time of filing a petition for letters of administration in an estate where the first administrator has died.

September 9, 1942.

Mr. Wilbur Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have requested my opinion as to the fees of the Clerk of District Court under the following state of facts:

"'A' died a resident of the State of Washington where her will was admitted to probate and the estate administered. Thereafter a petition for admission of a foreign Will to probate in Glacier County was filed pursuant to the provisions of Chapter 111 of the 1935 Revised Code and following the petition 'B' was appointed Administrator. Before concluding his duties as administrator 'B' died and 'C' petitioned the Court to be appointed as administrator with the will annexed. At the time that 'B' filed his petition, a five dollar fee was paid and at the time the foreign Will was admitted to probate an additional five dollar fee was paid."

The question for determination is whether a petitioner for Letters of Administration in an estate which is in course of probate, where the Administrator has died before the estate is finally closed, must pay the fee required for filing a petition for Letters of Administration.

Section 4919, Revised Codes of Montana, 1935, provides for fees to be charged and collected by the Clerk of Court in Probate proceedings, and in part as follows:

"At the time of filing petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.

"For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of five dollars. . ."

The term "fees" is commonly defined as the sums prescribed by law as charges for services rendered by public officers. (Collman v. Wanamaker, 27 Idaho, 342, 149 Pac. 292; 3 Words and Phrases, p. 2713.) Chief Justice Brantly, in the case of Hauser et al., v. Miller, 37 Mont. 22, 94 Pac. 197, in speaking on this subject said:

"We do not question the soundness of the proposition that the legislature has the power to require reasonable fees to be paid by the citizen for special services rendered to him from time to time by the different public officers, according to a fixed schedule, such fees being intended to make up the compensation of the officers. In such cases the citizen receives an equivalent in return, other than the benefit of good government which is enjoyed by all citizens alike. He may demand the services or let them alone, as he chooses."

The fee required by the above section with reference to petition for letters is for services rendered by the clerk in proceedings to secure such letters, such as filing the petition, posting notices of the hearing, administering the oath, filing the bond, etc. These same services are required to be performed by the clerk on the petition of the second petitioner, although in the same estate. The clerk is therefore required to charge the second petitioner the fee prescribed by the statute. The fee required by this statute for admitting the will to probate, which the statute specifically provides shall be "in addition" to the fee for petition for letters, is not required to be paid by the second petitioner, for the reason that the clerk performs no further services in this regard.

It is, therefore, my opinion the Clerk of Court must collect a fee of five dollars at the time of filing petition for letters of administration in an estate where the first administrator has died.

Sincerely yours,

R. V. BOTTOMLY
Attorney General