

Fees, for Filing Petition for Letters of Administration. Clerk of Court, Fees for Filing Petition of Letters of Administration.

The Clerk of the Court should charge the fees required by Section 3170, Revised Codes, except such fees as were provided for filing inventories, which latter fees were declared void by the Supreme Court.

Helena, Mont., June 7, 1909.

Hon. J. T. Vaughan,
County Attorney,
Big Timber, Montana.

Dear Sir:

I am in receipt of your letter of June 3, in which you request an opinion upon the following questions:

“Does Section 3170 of the Revised Codes, as declared void by our Supreme Court in *Hauser et al. v. Miller*, 37 Mont., 22, authorize the Clerk of the District Court to collect a fee of five dollars at the time of filing petition for letters testamentary, or administration or guardianship, from the petitioner? Can the

clerk of the district court refuse to file the petition until such fee is paid?

The opinion referred to in the above question applies only to that part of said section 3170 relating to the fees for filing the inventories and does not apply to the fee for filing the petition for letters, nor to any of the fees provided for in the last five paragraphs of such section, beginning with the fee for admitting a will to probate. In such case the executors paid the five dollar fee for filing the petition for letters of administration but refused to pay the fees required by said section at the time of filing the inventory, and it was only these latter fees that were contested in such action, the legality of the other fees of such section not being questioned. Your attention is called to the last sentence of the opinion, which reads as follows:

“What is here said has no application to the other provisions of the statute since their validity is not called in question.”

Again on page 24 of said opinion the court 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 officers.”

You are therefore advised that the clerk should charge five dollars at the time of filing the petition for letters testamentary, administration or guardianship.

In answer to your second question, you are advised that the clerk of the court may refuse to file the petition until the fee provided by law is paid, as section 3144, revised codes, expressly provides that the officers mentioned in such chapter must not in any case perform any official service unless the fees prescribed for such service are paid in advance.

Very truly yours,

ALBERT J. GALEN.

Attorney General.