

Clerk of the District Court, Fees Of. Fees, of Clerk of District Court. Public Administrator, Payment of Fees.

Where a public administrator proceeds in the administration of an estate by virtue of the provisions of Chapter 134, Laws of 1909, no fee need be paid to the clerk of the district court for the filing of the final act provided for in said act.

March 7th, 1911.

Hon. John Cuffe,
County Attorney,
Libby, Mont.

Dear Sir:

I am in receipt of your letter of the 1st inst., but owing to the unusual stress of business incident to the session of the legislature, answer has been somewhat delayed.

You submit for my opinion the question:

"What is the fee of the clerk of the district court for filing report of the public administrator made in pursuance to Section 4, Chapter 134, of the Laws of 1909?"

Section 3170, of the Revised Codes of 1907, provides what the fees of the clerk of the district court in probate proceedings are. The only item therein, which under any circumstances the public administrator would be bound to pay would be that item which provides for the payment of a fee of \$5.00 for filing the petition for letters of administration. However, the object of Chapter 134 of the Session Laws of 1909 is to provide for a summary settlement of estates where the value thereof is less than \$200.00, and in the event such estate has an aggregate market value of less than \$200.00, then no letters of administration are necessary to be issued to the public administrator. There being no provision of law for the payment of a fee by the public administrator where the administration is had under said Chapter 134, Laws of 1909, it is my opinion that no fee can be collected. I would respectfully refer you to the opinion rendered by this department October 8th, 1910, to C. E. Kumpe, state examiner, which you will find reported in Volume 3, Opinions Attorney General, page 433, where the following language is used:

"It may not seem reasonable that the clerk of the district court may be called upon to perform any duties without the payment of any fee but he is entitled to only such fees as are enumerated in Sections 3169 and 3170 of the Revised Codes of 1907, and there being no provision in either of said sections for the payment of a fee, no fee can be required."

Yours very truly,

ALBERT J. GALEN,
Attorney General.