

Fees, To Be Paid by Executors. Inheritance Tax, Amount to Be Paid. Executors or Administrators, Fees to Be Paid by.

The fee to be paid to and collected by a clerk of the court upon the filing of a petition for administration is five dollars.

The amounts due as inheritance taxes are as shown in this opinion.

May 7th, 1913.

Hon. Gerald Young,
County Attorney,
Thompson Falls, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 5th instant, in which you submitted your conclusions as to the fees to be paid to the clerk of the court by the executors or administrators of two estates, and also as to the inheritance tax to be paid by persons taking from these estates.

As to the fees to be charged by the clerk of the court upon the filing of the petitions, I will say that this question was decided in the case of *Hander et al., Respondents, v. Miller, Appellant*, in 37 Montana, page 22, 94 Pac. 197. It was decided in that case that the provisions of this section of the code, requiring the clerk to collect from the petitioners filing letters of administration or guardianship, sums ranging from five to ninety-five dollars on different sized estates, was void as in contravention of Sec. 4 of Art. XII, of the Constitution, and also to be obnoxious to the provisions of Sec. 11 of Art. XII of the Constitution.

It is therefore my opinion that the only fee which can be collected from these estates is the filing fee of five dollars.

As to the inheritance taxes, I am agreed with you that since the property in each estate descends to those persons classified by Judge Hunt in the case of *Hynes v. Wilcox*, 82 Mont. 4, as "favored persons," to-wit: to the widow of one of the decedents, and to the daughter of the other, that the real property would be exempt from

any inheritance tax, and that also as the personal property in each case descending to the heirs amounts to more than \$7,500, that the amounts received by them would be subject to a tax of \$1.00 on every \$100 of the clear market value of such property, and at and after the same rate for every less amount.

As to the case of the bequest of the sum of \$5,000 to a niece the wife of one of the decedents, I am agreed with you, this bequest is not to a person exempt under the terms of our statute and indicated by Judge Hunt as a "favored person," and that this bequest is liable for a tax under Sec. 7724 of the Revised Codes at the rate of \$5.00 on each and every \$100 of the clear market value of all such property.

It is therefore my opinion that the fees and inheritance tax upon the estates should be as follows:

Fees upon first estates, appraised at \$117,686, \$5.00.

Inheritance tax, 1% of amount received by wife of deceased; 5% upon clear market value of sum descending to niece of deceased's wife.

Fees upon second estate, \$5.00.

Inheritance tax, 1% upon the personal property descending to the daughter of the deceased.

Very truly yours,

D. M. KELLY,
Attorney General.