

**Public Administrator—Clerk of District Court. Fees,
Payment of.**

Sections 3088 and 3144 of Political Code Construed. In case there are assets belonging to the estate of a deceased person of which the public administrator may take possession by virtue of his office, before filing his petition for letters, he must do so and on filing his petition pay the regular filing fee.

January 24, 1917.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I have your letter of January 22nd, asking for my construction of Sections 3088 and 3144 of the Political Code, with reference to the payment in advance by a public administrator of the fees for filing a petition for letters of administration in the office of the Clerk of the Court.

Section 3144 provides as follows:

"The officers mentioned in this chapter must not, in any case perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond."

Section 3088 reads as follows:

"The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof as the same come into his hands."

Section 3073 makes it the duty of every public administrator to take charge of the estates of persons dying within his county, in

certain cases, and Section 3074 makes it the duty of such public administrator to take charge of an estate and procure letters of administration thereon, **in like manner and on like proceedings as letters of administration are issued to other persons.**

Section 7432, Code of Civil Procedure, prescribes the order in which persons are entitled to letters of administration of the estates of deceased persons, and a public administrator is listed as eighth in this classification and a creditor as ninth.

A public administrator, under the foregoing Sections of the code, must procure letters of administration like any other applicant. He is not ex officio administrator of any estate. *O'Rourke v. Harper et al.* 35 Mont. at 350.

The mere fact that a public administrator has filed a petition to be appointed administrator of an estate and paid out the filing fees therefor does not entitle him to be appointed as such administrator. *State v. Woody*, 20 Mont. at 418.

Section 3170 of the Political Code provides that at the time of filing a petition for letters testamentary of administration or guardianship, the clerk of the district court must collect from the petitioner the sum of \$5.00.

In view of the foregoing provisions of the code it would appear that whenever there are assets of which the public administrator may take possession by virtue of his office and before being regularly appointed administrator of the particular estate, he should take possession of such assets and file his petition for letters of administration like any other applicant and pay the filing fee for such petition in advance to the clerk of the court. But in case there are no assets of which the public administrator may take possession without being regularly appointed administrator, or in case it is doubtful whether any assets will ever come into the possession of the public administrator, and it is necessary for an administrator to be appointed in order to bring an action or properly protect the estate of the deceased person, in such cases it would not be necessary for the public administrator to pay a filing fee until after assets had come into his hands.

Respectfully,

S. C. FORD,
Attorney General