

Public Administrator—Clerk of Court—Fees—Estates.

The public administrator is not required to pay the clerk of court the filing fee for the petition for letters of administration until such time as he has assets of the estate from which to do so.

Mr. K. W. MacPherson,
County Attorney,
Deer Lodge, Montana.

May 4, 1931.

My dear Mr. MacPherson:

You have requested my opinion whether the public administrator must pay the clerk of court the filing fee for the petition of letters of administration at the time of filing the same in estates where there is no cash on hand at the time of filing the petition.

Under the provisions of section 9990, R.C.M. 1921, the public administrator is required to take charge of estates under the conditions specified therein, and section 9991 requires him to, immediately upon taking charge of an estate, procure letters of administration thereon.

From the foregoing it is evident that the public administrator has no discretion as to what estates he shall apply for letters of administration or when such application shall be made and the legislature must have had this in mind in enacting section 1005, R.C.M. 1921, which provides:

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

From the foregoing it is evident that the public administrator is not required to pay the filing fee in question at the time of filing the petition for letters of administration nor is it possible for him to do so for the reason that no assets of the estate can in any circumstances come into his hands until letters of administration have been issued.

For the foregoing reasons I agree with your conclusions that the public administrator is not required to pay the clerk of the court the filing fee for the petitions for letters of administration until such time as he has assets of the estate from which to do so.

Very truly yours,

L. A. FOOT,
Attorney General.