

"The public administrator applied for letters of administration in an estate. He was justified in believing that the deceased did not have any relatives in this State. Subsequently to his filing for letters an heir appeared and successfully contested the granting of letters of administration to the public administrator, and applied for and received letters of administration in his own name.

"The public administrator advanced the fee required for the filing of letters of administration, and now would like to have that sum of money refunded."

Your letter is not exactly clear as to whether you refer to the right of the clerk of court to refund the money, or the right of the public administrator to receive same from the estate.

If you are referring to the right of the county to refund this money, I am of the opinion that same cannot be done.

If you are referring to the right of the court to require repayment of this fee by the administrator to the public administrator, there appears to be no direct authority. It is made the duty of the public administrator to take charge of estates under Section 9990, R. C. M. 1921, and he may be required to surrender his administration to the proper party under Section 9994, R. C. M. 1921.

Where he has acted in good faith and proceeded solely in the fulfilling of his duties, it would seem to me that the court would be authorized to require the repayment of his expenditures by the administrator.

#### Opinion No. 82.

#### Public Administrator—Estates— Fees, Recovery of.

HELD: Where a public administrator, in good faith and proceeding solely in the fulfilling of his duties, has filed for letters of administration and paid the fee and where an heir subsequently appears and successfully contests granting of letters (1) the county cannot refund the fee to the public administrator (2) but it would seem that the court would be authorized to require the repayment of such expenditure by the administrator.

April 18, 1935.

Mr. William R. Taylor  
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Your question is as follows: