

No. 489

**ESTATES—LETTERS ADMINISTRATION—ADMINIS-
TRATORS—PUBLIC ADMINISTRATORS—FEE—CLERK
OF COURT, fee of**

Held: Public administrator is not required to pay at the time of filing the five dollar fee required by Section 4919, Revised Codes of Montana, 1935, for filing a petition for letters of administration, but must pay such fee out of the assets of the estate, as soon as the same come into his hands, as provided by Section 10005, Revised Codes of Montana, 1935.

September 25, 1942.

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana

Dear Mr. Young:

You have presented this question for an official opinion:

"When the Public Administrator files a petition asking to be appointed administrator of the estate of a deceased person, is the five-dollar fee provided by Section 4919, Revised Codes of Montana, 1935, for filing a petition for letters required to be paid in advance?"

Sections 4919 and 4892, both contained in Chapter 372 of the Political Code, Volume Two, Revised Codes of Montana, 1935, provide in part:

"4919. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, . . . the clerk must collect from the petitioner the sum of five dollars."

"4892. Fees must be paid in advance. 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 . . ."

Sections 9991 and 10005, both contained in Chapter 107 of the Code of Civil Procedure, Volume Four, Revised Codes of Montana, 1935, provide in part:

"9991. Must procure letters of administration—bond and oath. Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons . . ."

"10005. Fees—how paid. 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."

Sections 9991 and 10005 are special statutes dealing with public administrators, and became a part of the law when Montana was yet a territory (Laws of 1877). Sections 4919 and 4892 are general statutes dealing with fees of the clerk of court, and were enacted as a part of the Political Code of 1895.

Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the two must be read together and harmonized, if possible. To the extent of any repugnancy between the general and special statutes, the special will prevail over the general. (*Story Gold Dredging Company v. Wilson*, 106 Mont. 166, 76 Pac. (2nd) 73; *Lillis v. City of Big Timber*, 103 Mont. 206, 62 Pac. (2nd) 219.)

The legislature must, in this instance, have felt their was no irreconcilable conflict between the statutes cited, inasmuch as there was no repeal of the earlier laws by the later enactments. Repeals by implication are not favored in Montana, inasmuch as—where two or more statutory provisions relate to the same subject matter—they should be construed, if possible, so as to give effect to all. (*State v. Quinn*, 40 Mont. 472, 107 Pac. 506; *State v. Bowker*, 63 Mont. 1, 205 Pac. 961.)

Thus, effect must be given to Section 10005, 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—and hence, I am of the opinion the public administrator is not required to pay at the time of filing, the five-dollar fee required by Section 4919, Revised Codes of Montana, 1935, for filing a petition for letters of administration.

Sincerely yours,

R. V. BOTTOMLY
Attorney General