

**Opinion No. 239.**

**Fees for Filing Petitions—Special and  
General Administrators—Estates—  
Petition for Letters of Special  
Administrator.**

Held: Person filing petition for general letters of administration of estate who had previously paid fee for filing petition for special administration must pay filing fee for filing petition for general administration.

August 9, 1944.

Mr. J. W. Lynch  
County Attorney  
Chouteau County  
Fort Benton, Montana

Dear Mr. Lynch:

You have requested an opinion of this office asking if the clerk of court should charge for filing of petition for letters of administration on an estate of a deceased person, when the person so filing the petition had theretofore paid a filing fee for filing a petition for letters of special administration on the same estate.

Section 4919, Revised Codes of Montana, 1935, provides the fees to be charged by the clerk in probate proceedings in part as follows:

“At the time of filing the petition for letters testamentary, of administration, or guardianship, the clerk must collect from the petitioner the sum of five dollars.”

This section also provides for other fees to be charged for the filing of other petitions in any particular probate proceedings. Thus, the inference is given that the fee charged is for the filing of the petition and not the commencement of the probate proceedings. As a petition for letters of special administration is as much, or nearly as much, work to file as the petition for general administration, it is to be presumed the statute intended that even if the two petitions be filed in the same estate and by the same petitioner there would be two filing fees to be paid. This office held in Opinion No. 478, Volume 19, Report and Official Opinions of the Attorney General, that the charge was for the filing of the petition, and even in the event of death, a subsequent petitioner to fill the vacancy must pay the filing fee.

Furthermore, under our statutes proceedings for special administration and general administration are two entirely different proceedings for two entirely different purposes. The special administration is to preserve the estate from waste until someone is appointed to take charge of it, and is only allowable in the event of anticipated waste, destruction, or loss due to lack of care, while general administration is for the purpose of legally paying creditors and distributing the estate. Generally the law recognizes two distinct proceedings. See in this respect Bancroft's Probate, Volume 1, page 613, as follows:

“Special administration and general administration although upon the estate of the same decedent, are separate, distinct and independent proceedings.”

Therefore, it is my opinion a person filing a petition for letters of general administration of an estate must pay the sum of five dollars to the clerk at the time of filing, even if such petitioner had theretofore paid the sum of five dollars to the clerk for filing for special letters of administration on the same estate.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General