

**Opinion No. 45****Public Administrators—Fees—Estates**

**Held:** (1) If the aggregate market value of an estate of a deceased person is five hundred dollars or less in value then the public administrator is entitled to a commission of fifteen per cent of the total amount of any such estate in which he acts as administrator, as provided in Section 91-628, Revised Codes of Montana, 1947.

(2) If the aggregate market value of an estate of a deceased person is over five hundred dollars in value, the fees allowed a public administrator for administering an estate are governed by Sections 25-237 and 91-3407, Revised Codes of Montana, 1947.

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October 31, 1951.

Mr. Charles B. Sande  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Sande:

You have requested my opinion on a problem that has been raised in your county in regard to the correct compensation to be charged by a public administrator as fees for his services.

Section 91-628, Revised Codes of Montana, 1947, provides as follows:

"The public administrator shall receive as full compensation for his services, including attorney's fees a commission of fifteen per cent of the total amount of money received by him in any estate provided for in this act; provided, that in no case shall the compensation be less than five dollars." (Emphasis supplied)

Section 25-237, Revised Codes of Montana, 1947, provides as follows:

"The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed executors and administrators, as provided in Section 91-3407."

Section 91-3407, Revised Codes of Montana, 1947, provides for a graduated schedule of fees to be allowed administrators and executors depending upon the amount of the estate administered.

These two sections on their face appear to be in conflict with each other and under the general rule the section that was enacted later would be held to prevail. Since Section 91-628, *supra*, was enacted in 1909 and Section 25-237, *supra*, came into the law as part of the Political Code of 1895, it would appear that Section 91-628, *supra*, would apply.

However, a closer examination reveals that the two sections are not in conflict except in those estates where the aggregate market value of the estate is five hundred dollars or less, and in those cases Section 91-628, *supra*, would apply.

Section 91-628, *supra*, was originally enacted as Section 8 of Chapter 134, Session Laws of 1909. The 1909 act has not been amended since it was enacted and now comprises Sections 91-621 to 91-628 inclusive of the 1947 code. The 1909 act provided a procedure to be followed by the public administrator in ascertaining the amount of property left by a decedent for whose estate no administrator had been appointed. The Act also outlines a summary procedure to be followed if the estate is five hundred dollars or less in value. You will note that I have underlined the following words of Section 91-628, *supra*, "provided for in this act." Since Section 91-628, *supra*, is the last section of Chapter 134, Session Laws of 1909, I believe that it is clear that the legislative intent was that the administrator would be entitled to the fifteen per cent fee only in those estates worth five hundred dollars or less.

Section 25-237, *supra*, is a general statute and governs the fees to be allowed a public administrator generally. However, in those estates with a value of five hundred dollars or less, Section 91-628, *supra*, being a special statute would control. It is the general rule of statutory construction that if

two statutes deal with the same subject, one in general terms and the other more minutely and definitely, the two must be read together and harmonized if possible, but the special statute prevails over the general one to the extent of any necessary repugnancy. *Durland v. Prickett*, 98 Mont. 399, 39 Pac. (2d) 652; *In re Wilson's Estate*, 102 Mont. 178, 56 Pac. (2d) 733, 105 A. L. R. 367.

Therefore, it is my opinion that

(1) If the aggregate market value of an estate of a deceased person is five hundred dollars or less in value, then the public administrator is entitled to a commission of fifteen per cent of the total amount of any such estate in which he acts as administrator, as provided in Section 91-628, Revised Codes of Montana, 1947.

(2) If the aggregate market value of an estate of a deceased person is over five hundred dollars in value the fees allowed a public administrator for administering an estate are governed by Sections 25-237 and 91-3407, Revised Codes of Montana, 1947.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General