

5092.

PROBATE JUDGE—SHOULD CHARGE SUMS PROVIDED BY SECTIONS 2900 AND 2901, G. C., FOR TAKING AFFIDAVITS, ETC.

SYLLABUS:

A Probate Judge should charge the sums provided by Sections 2900 and 2901, General Code, for taking affidavits and acknowledgments in cases docketed in the Probate Court.

COLUMBUS, OHIO, January 13, 1936.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

“The Probate Judge has requested an opinion from you as to whether or not it is necessary for him to charge and collect as part of the fees in cases docketed in his court, a stipulated sum for oaths and acknowledgments taken by him or his deputies.

Section 2900 of the General Code requires that a Clerk of Courts shall charge and collect a fee of twenty-five (\$.25) cents for taking affidavits, including certificate and seal. Is there any similar statute requiring or authorizing the Probate Judge or his deputies to make a similar charge?”

Section 10501-42, General Code, enumerates in detail the various fees that a probate judge may charge and collect for various services. This section does not, however, specify any charge for the taking of affidavits and acknowledgments by the probate judge. Section 10501-44, General Code, is therefore pertinent to your inquiry. This section reads as follows:

“For other services for which compensation is not otherwise provided by law, the probate judge shall be allowed the same fees as are allowed the clerk of the Court of Common Pleas for similar services.”

A reference to the sections providing the fees for clerks of the Courts of Common Pleas, discloses the following pertinent sections:

Section 2900:

“For the services hereinafter specified, when rendered, the clerk shall charge and collect the fees provided in this and the next following section and no more: * * * for taking each affidavit including certificate and seal, twenty-five cents; * * *”

Section 2901:

“* * *; for acknowledging deed or other instrument of writing, forty cents; * * *”

It would seem to follow, therefore, that the probate judge may legally assess the fees provided in Sections 2900 and 2901, General Code, for the taking of affidavits and acknowledgments. This conclusion is strengthened by the fact that the legislature has specifically provided that in certain instances the probate judge shall administer oaths free of charge.

Section 10501-46, General Code, reads as follows:

“The probate judge shall administer oaths, and make certificates in pension and bounty cases, without compensation.”

In an opinion to be found in the opinions of the Attorney General for 1919, Volume 1, page 858, the then Attorney General was called to pass upon Section 1603, General Code (present Section 10501-44, General Code). While not called to pass upon the exact question presented by you, he nevertheless assumed that a probate judge might charge for taking an affidavit the amount fixed by Section 2900, General Code.

In view of the above and without extending this discussion, it is my opinion, in specific answer to your inquiry, that a probate judge should charge the sums provided by Sections 2900 and 2901, General Code, for taking affidavits and acknowledgments in cases docketed in the Probate Court.

Respectfully,

JOHN W. BRICKER,
Attorney General.