

You inquire as to whether or not your board is subject to any jurisdiction whatsoever by the Director of Finance. As to this, your attention is directed to the provisions of Section 154-28, General Code, which section defines the powers of the Department of Finance administered by the Director. The language is in part as follows:

“The department of finance shall have power to exercise control over the financial transactions of all departments, offices and institutions, excepting the judicial and legislative departments, * * *.”

In view of the foregoing section, there is no doubt but that your board is in the same category in so far as the Department of Finance is concerned as other state departments or boards.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

441.

PROBATE COURT—LEGAL ADVERTISING OR PRINTER'S FEES—NOT COSTS SUBJECT TO MINIMUM OF \$10.00—SECTION 10501-42, SUBSECTION 48 GENERAL CODE — ESTATES UNDER \$500.00.

SYLLABUS:

Costs of legal advertising or printer's fees for the publication of notice of appointment and other notices necessary to be made or published in the Probate Court, are not such costs as referred to in subsection 48 of Section 10501-42, General Code, and are properly chargeable by the Probate Judge in addition to the \$10.00 minimum fee in estates not exceeding \$500.00 in total value.

COLUMBUS, OHIO, April 12, 1937.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I am in receipt of your recent letter which reads as follows:

“Article 48 of Ohio General Code, Section 10501-42 limits the total fees of the Probate Judge chargeable against an estate, the assets of which do not exceed \$500.00 in value, to \$10.00.

I would like your opinion as to whether or not this limit of \$10.00 includes printer's fees, as, for example, the publication of notice of appointment, or whether the \$10.00 can be collected in addition to printer's fees."

Section 10501-42, General Code, reads in part as follows:

"The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings:

48. Provided, however, that in estates the assets of which do not exceed five hundred dollars in value the total fees of the probate judge chargeable against such estate shall not exceed.....10.00."

The language of this section must be noted in that the words "chargeable against such estate" are used. This section of the Code refers to forty-eight different items of fees to be paid the Probate Judge in the administration of estates. Among these forty-eight different items it is noted that legal advertising or cost of printer's fees is not referred to.

Section 10501-44, General Code, provides 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."

This provision takes in all other necessary charges or fees for services not provided for in Section 10501-42, General Code.

Referring now to the proceedings in which it is necessary that notice to creditors and parties to the suit be given, the sections relating to the necessity of notice and advertisement state as regards the appointment of executors, administrators and other fiduciaries that the court shall *cause* the appointment to be advertised. As regards the notice or advertisement relating to land sale proceedings. the provision is that the executor, administrator, or guardian must give the notice. The words that the court shall cause the advertisement to be made mean that the court may take upon itself the task of giving notice or advertising or compel the fiduciary to furnish proof satisfactory to the court that actual notice has been served upon the necessary creditors or parties, or adequate advertising has

been completed. In any such case the cost of giving such notice or of advertising must be borne by the fiduciary either personally or charging the same to the estate.

The only case that I have been able to find having any bearing on such circumstances as you refer to is the case of *In Re Joseph F. Crum, a Minor*, 31 N. P. (N. S.) 105. The syllabus by Judge Lamneck reads as follows:

“1. The limitation of a maximum of \$10.00 in Probate Court fees chargeable in an estate, the assets of which do not exceed \$500.00, as provided for in Section 10501-42, General Code, does not apply to a proceeding for settling a claim for wrongful injury.

2. Such limitation only applies to proceedings in an estate listed in said section where the costs are taxed against the fiduciary in his fiduciary capacity, and not to proceedings where the costs are taxed to other persons, or to proceedings not listed therein.”

There are two opinions of the Attorney General relating to this \$10.00 minimum fee, the first in Opinions of the Attorney General for 1932, Vol. III, Page 1324, and the second in Opinions of the Attorney General for 1933, Vol. III, Page 1651, but neither is directly in point on your question. These opinions hold substantially that the \$10.00 minimum fee applies not only to estates of decedents but also to estates of living persons, such as guardianships, and that the cost of other collateral proceedings in connection with estates is not included in the category of fees allowed the Probate Judge or the various steps in the administration of estates.

In specific answer to your inquiry it is my opinion, in view of the foregoing, that the costs of legal advertising or printer's fees for the publication of notice of appointment and other notices necessary to be made or published in the Probate Court, are not such costs as referred to in sub-section 48 of Section 10501-42, General Code, and are properly chargeable by the Probate Judge in addition to the \$10.00 minimum fee in estates not exceeding \$500.00 in total value.

Respectfully,

HERBERT S. DUFFY,
Attorney General.