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PROBATE JUDGE—WHEN COMPENSATED FOR CONDUCTING HEARINGS TO DETERMINE INHERITANCE TAX ASSESSED AGAINST DECEDENT'S ESTATE—JUDGE DECEASED—SUCCESSOR JUDGE DULY QUALIFIED—MAY BE COMPENSATED FOR LIKE SERVICES DURING SAME YEAR—RATE SUBJECT TO LIMITATIONS—SECTION 5348-10a G. C.

SYLLABUS:

Where a probate judge dies after having received as compensation for conducting hearings for the determination of inheritance tax assessed against decedents' estates the sum of three thousand dollars during the year of his death under authority of Section 5348-10a, General Code, and a successor has qualified for office, such successor judge may be compensated for like services rendered during such year at the rate and subject to the limitations of such section.

COLUMBUS, OHIO, October 5, 1939.

HON. CARL W. RICH, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, as follows:

"We are in receipt of a request for an opinion by Mr. George Guckenberger, Auditor of Hamilton County, Ohio, in which he says:

"There was presented to me this morning a voucher amounting to \$760.00 in favor of the Probate Judge, for fees due the Probate Judge under Section 5348-10a.

Previous to the passing of the former Probate Judge, he had already collected for this year the maximum amount of \$3,000.00 as allowed for fees for any one year under the above section.

Will you kindly advise whether or not we have authority to pay this voucher?"

This question is one of state wide importance and although it might not arise frequently as it has arisen in Hamilton County, we feel that we would like the opinion of your office in the matter."

Section 5348-10a. General Code, referred to in your request, reads:

"For services performed by him under the provisions of this chapter each probate judge shall be allowed a fee of five dollars

in each inheritance tax proceeding in his court in which tax is assessed and collected and a fee of three dollars in each such proceeding in which no tax is found, which fees shall be allowed and paid to such judges as the other costs in such proceedings are paid but are to be retained by them personally as compensation for the performance by them of the additional duties imposed on them by this chapter. Provided always, however, that the amount paid to any probate judge under this section shall in no case exceed the sum of three thousand dollars in any one year."

As pointed out in an opinion of one of my predecessors (Opinions of the Attorney General for 1925, p. 2081), when a probate judge who has replaced a former office holder performs all of the services of the probate court with reference to an inheritance tax assessment he, rather than his predecessor in office is entitled to the fee allowed by statute for the performance of such services. By reason of such ruling, I am assuming for the purposes of this opinion that the probate judge in question has performed the services necessary to entitle him to the \$760.00 payment mentioned in your request unless, by reason of the maximum limitation imposed by statute he is deprived of such compensation. You will note that the statute does not allow the fee to the court, as such, but rather provides that, "which fees shall be paid to such judges," and as though to make the meaning more clear the legislature has stated, "but are to be retained by them personally as compensation for the performance by them of the additional duties imposed on them by this chapter."

The legislature has specifically provided that the compensation of five dollars is to be paid to the probate judge for *his* compensation for *his* services "in each inheritance tax proceeding in *his* court in which tax is assessed and collected" etc. Were it not for the proviso there would be no limitation upon the right of the judge to receive the full statutory fee in each case regardless of the number of inheritance tax proceedings determined by such judge.

Your inquiry, therefore, is concerned only with the proviso attached to Section 5348-10a, General Code. Such proviso reads:

"Provided always, however, that the amount paid to any probate judge under this section shall in no case exceed the sum of three thousand dollars in any one year."

As above pointed out, the statute allows the fee to the judge, rather than to the court over which he presides. The proviso refers to the judge and not to the court. Such being the fact, your question lies as to whether, when an individual is appointed to the office of probate judge to fill out the unexpired term of a deceased occupant, he is the same judge as the deceased member within the meaning of this section. An examination of

the decisions construing the phrase "any judge" as used in various statutes will indicate that courts have defined the term to include only the *present* occupant of a judicial office. See *City Bank v. Young*, 43 N. H., 457, 460; *Du Bignon v. Tufts*, 66 Ga., 59, 61; *People v. Goodwin*, 50 Barb. (N. Y.), 562, 566. It appears to me that the legislature has used plain and unambiguous language to the effect that the limitation expressed in the statute, is against the particular judge receiving more than three thousand dollars compensation for his services in any one year. If the legislature had intended to limit the maximum compensation that might be permitted to the presiding officer of a probate court in any one year it could have so stated, and without the use of any more words than are contained in the present statute. As stated in *Reffing v. Bernet*, Com'r., 47 Fed. 2d, 859, headnote 4:

"Court in construing statutes, must presume that legislative body understood accepted meaning of words used."

The statute is specific to the effect that the compensation shall be paid to the judge, rather than the court, and to the effect that the *judge* shall not receive more than three thousand dollars, from such fees, in any one year. Whether we agree with the wisdom or policy of such legislation is immaterial; such considerations are solely for the legislature. If no constitutional limitation is violated by the legislative policy as expressed by the act, the court must give full effect to the act. In view of the express language of the statute, I must answer your inquiry in the affirmative.

In specific answer to your inquiry it is my opinion that, where a probate judge dies after having received as compensation for conducting hearings for the determination of inheritance tax assessed against decedents' estates the sum of three thousand dollars during the year of his death under authority of Section 5348-10a, General Code, and a successor has qualified for office, such successor judge may be compensated for like services rendered during such year at the rate and subject to the limitations of such section.

Respectfully,

THOMAS J. HERBERT,
Attorney General.