

1533

PROBATE COURT—ESTATE—NO COSTS SHALL BE CHARGED OR TAXED FOR FILING ACCOUNTS, APPLICATIONS FOR APPOINTMENT OF GUARDIAN OR ANY OTHER SUBSEQUENT PROCEEDINGS UNLESS VALUE OF ESTATE EXCEEDS \$1500.00—MONEYS DUE UNDER VETERANS' ADMINISTRATION AWARD INCLUDED—SECTION 10507-2 G. C.

## SYLLABUS:

Section 10507-2, General Code, provides that no probate court costs shall be charged or taxed for the filing of accounts, applications for appointment of a guardian or any other subsequent proceedings made in pursuance of the appointment unless the value of the estate, including the moneys due under the veterans' administration award, exceeds \$1500.00.

Columbus, Ohio, March 7, 1950

Hon. Joseph T. Ferguson, Auditor of State of Ohio  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your attention is directed to the provisions of G. C. Section 10507-2, as amended, which states, in part:

"\* \* \* When the primary purpose of the appointment of a guardian is, or was, the collection, disbursement or administering of moneys awarded by the veterans administration to the ward, or assets derived therefrom, *no probate court costs shall be taxed or charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment*, unless the value of the estate, including the moneys then due under the veterans administration award, shall exceed \$1,500.00.'

(Underscoring ours.)

"The question has arisen as to whether a strict interpretation of the above statute would require a probate judge to collect costs for all matters in an affected guardianship except the appointment and 'subsequent proceedings made in pursuance of the appointment', as, for example, motion to vacate the appointment.

"Your opinion is, therefore, respectfully requested as to whether the law provides a probate judge should tax or charge

court costs for the filing of accounts, application, and other papers, or any other proceedings subsequent to the appointment of a guardian for a veterans administration beneficiary in a case where the value of an estate does not exceed \$1,500.00."

The portion of Section 10507-2, General Code, which you quote in your request became effective October 25, 1949.

You ask specifically whether court costs should be charged for filing of accounts, application for appointment of guardian or any other proceedings subsequent to the appointment of a guardian for a veterans' administration beneficiary in a case where estate does not exceed \$1,500.00. Obviously, Section 10507-2, General Code, was intended to cover the latter steps, "subsequent proceedings." Any probate court proceedings made by a guardian while acting as such would be made "in pursuance of the appointment" and therefore, should not be taxed or charged by the probate judge. An application for appointment of guardian is a "proceeding for the appointment" of a guardian and should not be taxed. Further, it is apparent that the filing of accounts by a guardian is a "subsequent proceeding made in pursuance of the appointment" as set forth in Section 10507-2, General Code.

Once a guardian has been appointed, a motion to remove such guardian is actually a necessary step which must be taken in order to have a new guardian appointed. Thus, I believe that it would be covered by the express term "proceeding for the appointment" of a guardian and should not be taxed.

It should be noted that the word "shall" is used in the statute. In 37 O. Jur. Section 29 at page 326, it states:

"\* \* \* But even the use of the word 'shall' is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated. \* \* \*"

Thus, it can be seen that this is a mandatory statute and must be followed.

In conclusion, therefore, it is my opinion that Section 10507-2, General Code, provides that no probate court costs shall be charged or taxed for the filing of accounts, application for appointment of guardian or any

other subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the veterans' administration award, exceeds \$1500.00.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.