

2401

1. VETERAN'S ADMINISTRATION AWARD—VALUE OF ESTATE—ONLY AMOUNT OF AWARD ON HAND OR IS DUE AND PAYABLE SHOULD BE INCLUDED IN VALUE OF ESTATE—SECTION 10507-2 G. C.
2. IF A LATER ACCOUNT FILED SHOWING VALUE OVER \$1500.00 ONLY COSTS OF LATER ACCOUNT SHOULD BE COLLECTED—COURT NOT REQUIRED TO COLLECT ALL ACCUMULATED COSTS TO DATE OF LATER ACCOUNT.

SYLLABUS:

1. Under Section 10507-2, General Code, only the amount of the veteran's administration award that is then on hand or has become due and payable should be included in the value of the estate.
2. If a later account is filed showing that the value of the estate is over \$1500.00, only the costs of the later account should be collected. The court would not be required to collect all costs that have accumulated to the date of the later account.

Columbus, Ohio, October 10, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"A question has been raised as to the costs which a Probate Court may assess in the operation of Section 10507-2, General Code, as last amended, effective October 25, 1949.

This question has been submitted to us in the form of a letter, a copy of which is herewith enclosed.

We respectfully request your formal or informal opinion and answer to the questions set forth in this letter."

The letter referred to in your communication, so far as pertinent, reads as follows:

"An opinion is requested concerning the third paragraph of Section 10507-2 G. C., which became effective on October 25, 1949, and which provides that

'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 award, 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.'

and it is that part of said paragraph relating to costs to be collected by the Probate Court which is in dispute, specifically the interpretation of the words 'unless the value of the estate, including the moneys then due under the veterans administration award, shall exceed \$1,500.00.'

1. It is contended that an estate does not exceed \$1,500.00, and no costs are to be collected unless the Inventory or an Account reflects \$1,500.00 or more on hand at the time of filing, and, therefore, the 'value of the estate' is less than \$1,500.00.

2. It is contended that, where there is a continuing monthly award and that this monthly award, plus what is then due from the veterans administration, will exceed \$1,500.00 over a period of time, the value of said estate is more than \$1,500.00, and that the Probate Court is required by law to collect costs, and that the amount on hand at any time is not the measure of the value of said estate.

3. If you are of the opinion that the amount on hand, as reflected in the inventory or an account, is the value of the estate, and if at any time an Account should be filed reflecting a value of \$1,500.00 or more, would the probate court be required to collect all costs that have accumulated to the date of that Account, or only for the costs of that account?"

Your question can be paraphrased as follows :

"Assuming a person's estate consists of \$1500.00 worth of real and personal property, should the total estimated income of the veterans administration award extended over a period of time be included to arrive at the value of the estate, or should only the amount that is due and payable at the time of the inventory be included?"

One purpose of the inventory is to get a true picture of the worth of the ward's estate at one particular time. To do this, it is necessary to include moneys that are then due and payable to the ward.

It would be manifestly unfair and incorrect to include in the ward's estate money to which he would have no legal claim if the government changed its policy on the matter. The ward has no vested right in the possible future payments. The only awards that should be included are

those which have been paid or have become due and payable. That is, assume the award is made due and payable on the thirtieth day of the month. If the inventory or account were made on the first day of February, it would be proper to include the January thirtieth award even though not actually collected. It would not be proper to include any possible future award at this time.

To answer your second question we must look to the intent of the legislature. The purpose of this statute is to exempt persons with estates of less than \$1500.00 from paying court costs. On this basis the legislation could be classified as welfare legislation, which should be interpreted in favor of the person benefited.

In 37 O. Jur., Section 415, at page 737, it states in part as follows :

“Statutes enacted in Ohio for the protection of human life, or statutes of equitable character and beneficent tendency, or statutes granting a valuable right and grounded upon principles of a humane public policy, have been given a liberal construction by the courts. * * *”

It would be an absurdity to claim that because a person now has \$1501.00 in his estate that he should be liable for court costs incurred during a previous time when the account showed his estate was worth less than \$1500.00. Legislation of this kind should be given a liberal interpretation in order to carry out the intent of the legislature.

In 37 O. Jur., Section 275, at page 508, it is stated as follows :

“A construction adopted should not be such as to defeat the obvious intention of the legislature or do violence thereto, wholly or partially, but rather one which would carry such intention into effect.”

In conclusion, therefore, it is my opinion that under Section 10507-2, General Code, only the amount of the veterans administration award that is then on hand or has become due and payable should be included in the value of the estate. It is also my opinion that if a later account is filed showing that the value of the estate is over \$1500.00, only the costs of the later account should be collected. The court would not be required to collect all costs that have accumulated to the date of the later account.

Respectfully,

HERBERT S. DUFFY,
Attorney General.