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PROBATE JUDGE—CUYAHOGA COUNTY—SALARY—MAY RECEIVE NINE THOUSAND DOLLARS FROM COUNTY FUNDS—MAY RECEIVE SUCH AMOUNTS FROM INHERITANCE TAX FUNDS TO WHICH HE MAY BE ENTITLED—UP TO AMOUNT WHERE COMBINED COMPENSATION WILL NOT EXCEED TWELVE THOUSAND DOLLARS—SECTION 2996 G. C.

SYLLABUS:

The Probate Judge of Cuyahoga County may receive the sum of nine thousand dollars as salary, under Section 2996 of the General Code, from county funds, and such amounts to which he may be entitled from inheritance tax funds up to an amount where the combined compensation will not exceed twelve thousand dollars.

Columbus, Ohio, January 5, 1951

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your inquiry regarding payment of salary and fees to the Probate Judge of Cuyahoga County reads as follows:

"A question has arisen here as to the compensation of the Probate Judge of Cuyahoga County involving Section 2996 and Section 5348-10a of the General Code.

"The annual salary of the Probate Judge under Section 2996 of the General Code, payable from county funds and based on population, is fixed at \$9,000.00.

"Section 5348-10a, as amended, (substitute Senate Bill 223—97th General Assembly) and effective in this county on February 9, 1949, being an enactment subsequent to Section 2906 G. C., provides for the compensation each Probate Judge shall receive for services performed by him in inheritance tax cases, which shall not exceed \$4,000.00 in any calendar year. The last sentence of that section raises the question involved and is as follows:

" 'And in no case shall the total compensation exceed \$12,000.00 per annum.'

"There seems to be a conflict between the two sections—Section 2996 fixing a maximum annual salary for Probate Judges under its provisions of \$9,000.00, and Section 5348-10a fixing a maximum of \$4,000.00 for services performed by Probate Judges in inheritance tax cases, and then reciting what would seem to be an irrelevant provision fixing a maximum of \$12,000.00 per annum.

"The County Auditor poses these questions:

"1. May the Probate Judge receive the sum of \$9,000.00 under Sec. 2996, G. C., from county funds, and the sum of \$4,000.00 under Sec. 5348-10a, G. C., from inheritance tax funds?

"2. If not, does the Probate Judge have authority to receive from inheritance tax monies the sum of \$4,000.00 per annum, and receive only \$8,000.00 from county funds, under Section 2996, G. C., or \$9,000.00 from the county and \$3,000.00 from inheritance taxes?

"I am attaching a memorandum submitted by Probate Judge Nelson Brewer in this connection."

A review of the statutes covering this subject reveals the following Code sections affecting the questions in issue:

Section 2996, General Code, which fixes the compensation of the Probate Judge, reads as follows:

"Such salaries and compensation shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which any of such officials may collect and receive, provided that in no case shall the annual salary and compensation paid to any such officer exceed six thousand dollars, except in the case of the probate judge whose annual salary shall not exceed nine thousand dollars."

Section 5348-10a, as amended, provides for fees to the Probate Judge from funds derived from inheritance tax receipts. This section reads as follows:

"In lieu of fees for services performed by him in inheritance tax cases, each probate judge shall receive annually six cents per capita for each full one thousand of the first ten thousand population of the county and 1½ cents per capita for each full one thousand over ten thousand population of the county, as shown by the last federal census next preceding his election which shall be paid to such probate judge in equal monthly installments from the state's share of the undivided inheritance tax in the county treasury on the warrant of the county auditor. Provided, however, that the amount paid to any probate judge for services rendered in inheritance tax cases shall not exceed three thousand dollars in any calendar year. Provided, further, that from and after the expiration of the term of office of any probate judge holding office on the effective date of this act in counties having a population of two hundred thousand and over according to the last preceding federal census, the amount paid shall not exceed four thousands dollars in any calendar year, paid any probate judge, and in no case shall the total compensation exceed twelve thousand dollars per annum."

It is clear to see from the provisions of Section 2996 that the maximum salary for the Probate Judge of Cuyahoga County would be \$9,000.00. It is also clear from the wording of Section 5348-10a, as amended, that the maximum allowable in any calendar year to be paid any probate judge is \$4,000.00.

There seems to be no question but what the Probate Judge of Cuyahoga County can receive funds as prescribed by Section 5348-10a in addition to his statutory salary, as set out in Section 2996, General Code.

Your first inquiry poses the question of whether the Probate Judge may receive \$9,000.00 from the county under Section 2996 and receive funds under Section 5348-10a, as amended, from inheritance tax receipts. This was first determined by an Attorney General of Ohio in Opinion No. 2349 of the year 1921. The second paragraph of the syllabus of this opinion reads as follows:

“Probate judges are entitled to the fees specified in said section on all estates inheritance tax proceedings which are filed after September 6, 1921, when the new law takes effect. They are not entitled to such fees in inheritance tax proceedings filed before that date. The time when letters of administration have been applied for in a given case is entirely immaterial as determining whether the new law applies to it or not.”

The above quoted opinion refers to the original Section 5348-10a wherein the amount a probate judge could receive was on a flat fee basis. This section of the Code was revised in 1945, changing the amount so received to a population basis and providing the total to be so received by any probate judge in any one year from this tax to be \$3,000.00.

Again in 1947 this section was again revised, as set out in this opinion, raising the total amount a probate judge could receive to \$4,000.00 in counties over 200,000 in population, and further adding the restriction that in no case should the total compensation exceed \$12,000.00.

Therefore, it is clear, through the several amendments to the original section, that the probate judges are entitled to receive funds from the inheritance tax moneys available.

Specifically answering your question whether or not the probate judge may receive \$9,000.00 under Section 2996 of the General Code, and \$4,000.00 from the inheritance tax funds authorized under Section 5348-10a, as amended. I would say that he could not receive those amounts, as they total more than \$12,000.00, the ceiling limited in Section 5348-10a for total compensation.

It must be borne in mind that Section 5348-10a, as amended, states “amount paid shall not exceed four thousand dollars in any calendar year,

paid any probate judge, and in no case shall the compensation exceed twelve thousand dollars per annum." These restrictions can only be interpreted to mean that in counties of over 200,000 population the probate judge can receive up to \$4,000.00 if his total compensation, which includes his regular salary, does not exceed \$12,000.00. There can be no other reasonable interpretation of the two restricted features.

Your second inquiry regards whether a probate judge who otherwise would be entitled to receive \$13,000.00 from inheritance tax moneys and salary combined, should have the excess thousand dollars deducted from his salary or inheritance tax moneys. Since the probate judge is provided with a salary for his position, and since the money he receives from the inheritance tax work is additional compensation for additional work, it would seem logical that he should receive his basic salary in its entirety and that portion of the inheritance tax compensation to which he is entitled up to the amount where his total compensation does not exceed \$12,000.00.

Therefore, in answer to your inquiries, it is my opinion that the Probate Judge of Cuyahoga County may receive the sum of \$9,000.00 as salary under Section 2996 of the General Code, from county funds, and such amounts to which he may be entitled from inheritance tax funds up to an amount where the combined compensation will not exceed \$12,000.00.

Respectfully,

HERBERT S. DUFFY,
Attorney General.