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PROBATE COURT—"TOTAL FEES EARNED BY THE PROBATE COURT"—TERM REFERS TO TOTAL FEES CHARGED BY PROBATE COURT FOR ITS SERVICES DURING CALENDAR YEAR—COLLECTED OR NOT COLLECTED—SECTION 10501-5 G. C.

SYLLABUS:

The term "total fees earned by the probate court", as used in Section 10501-5, General Code, refers to total fees charged by the probate court for services rendered during the calendar year, whether collected or not.

Columbus, Ohio, January 26, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"Section 10501-5, General Code, reads in part as follows:

'* * * It is hereby made the duty of the county commissioners to appropriate such sum of money each year as will meet all the administrative expense of the court which the probate judge deems necessary for the operation of the court, including the salaries of the appointees of the court as the probate judge shall fix and determine; provided, however, the total compensation paid to the appointees of the court in

any calendar year shall not exceed the total fees earned by the court during the preceding calendar year unless approved by the board of county commissioners. * * *

“May we respectfully request your opinion upon the following question :

‘In the above quotation, does the phrase “total fees earned by the court during the preceding calendar year” have reference to the fees charged by the court for services rendered during the calendar year, whether collected or not, or does it have reference to the fees collected and paid into the county treasury during the calendar year?’ ”

Your request specifically requires the interpretation of the legislative intent by its use of the word “earned.” The chapters of our code which are significant to this problem are entitled “Probate Code” and “Salaries of County Officers.” However, throughout these chapters the term “earned” is absent except in the section in question. It is therefore necessary to determine the scope and functions of the probate court with reference to fees. See 37 O. J., 655, which reads :

“In the interpretation of ambiguous language in statutes, the intent of the lawmaking body should be sought in every legitimate way. For this purpose, references are occasionally made by the courts to the scope or character of the statute under consideration.”

Section 10501-5, General Code, in addition to that portion which you have set out, reads in part as follows :

“Each probate judge * * * may appoint a deputy clerk or clerks, stenographers, bailiff, and any other employees as may be necessary * * *.

“Such appointees shall receive such compensation and expenses as the probate judge shall fix and determine * * *. The compensation of such appointees shall be paid in semi-monthly installments by the county treasurer from the county treasury, upon the warrants of the county auditor, certified to by the judge of the court. * * *”

It will be noted that compensation to appointees of the probate judge is not paid from any particular or segregated fund derived from costs or fees collected in the probate court, but from the county treasury itself.

In fact, one of the various sources from which flow the funds which become public moneys belonging to the county and resting in the county

treasury is the probate court. This collection of funds is provided for by Section 2977, General Code, which reads in part as follows:

“All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a * * * probate judge * * * shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided.”

The General Assembly, moreover, by its enactment of Section 10501-42, General Code, recognized that a probate judge may not be successful in collecting all the fees to which he is entitled. 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 * * *.”

Surely, it can be said that those fees which have not yet been collected are nevertheless fees earned.

Again, in Section 2979, General Code, which has application to several county officers, including the probate judge, there appears to be legislative recognition of the fact that fees may be earned yet uncollected. This is evident from that portion of Section 2979, General Code, which reads as follows:

“On or before January 15th annually, each of said officers shall file with the prosecuting attorney of his county, a report in writing showing the amount of fees, percentages, penalties, allowances and other perquisites *due* his office from each person or corporation which has remained due and unpaid for more than one year prior to January 1st, next preceding, and it shall be the duty of the prosecuting attorney to immediately proceed to *collect* the same by any of the means provided by law, and to pay the amount so *collected* into the county treasury to the credit of the general county fund. * * *” (Emphasis added.)

Section 2983, General Code, also lends cognizance to this point, and I quote:

“On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages,

allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made."

Here, again, "fees due and unpaid" certainly are fees earned.

There are several other statutes enlightening to this problem, one of which, Section 10501-41, General Code, reads in part:

"In each case, examination or proceeding, the probate judge shall make and file an itemized account of fees by him received or charged therein."

"Charged therein," it is presumed refers to fees earned but not yet paid in.

Section 2982, General Code, is also similar and includes duties of the probate judge:

"Each of such officers shall keep full and regular accounts of all official fees, costs, percentages, penalties, allowances or other perquisites charged or collected by him, and such accounts shall be records of the offices, shall belong to the county, and shall be transmitted by such officer to his successor in office * * *."

Section 3046, General Code, further enlarges upon the contention that the legislature intended the term "earned" to be defined according to its common connotation. That section reads in part:

"On the first Monday of September of each year each * * * probate judge * * * shall make returns, under oath, to the county auditor, of the amount of fees and moneys received by them, or due them during the year next preceding the time of making such returns."

Earned is inclusive of the phrase "received by them or due them."

In 28 C. J., 609, "earned" is discussed as follows:

"The word has been construed as meaning entitled to a sum of money under the terms of a contract, implies that wages earned are owing, and may carry the meaning of unpaid * * *."

The General Assembly is presumed to use the term "earned" advisedly and intelligently to disclose the plain and simple meaning of the term unless such interpretation would be repugnant to their intention. By the quotation of the sections above, it is obvious that the legislature intended the word "earned" to be given its full and natural meaning. It is a familiar canon of construction that words of a statute will be construed with the meaning commonly attributed to them.

In common usage and by literal interpretation the word "earned" includes not only that which has been paid in but that which is due, owing or payable. Webster's New International Dictionary (Second Edition, Unabridged) defines "earned" as follows:

"1. To merit or deserve, as by labor or service; to do that which *entitles* one to (a *reward, whether the reward is received or not*)." (Emphasis added.)

You will note that throughout the sections above quoted the term "collected" has been used by the legislature. I have been unable to find any definition which lists "collected" and "earned" as synonymous terms.

It is clear from the foregoing sections that the General Assembly intended to use the term "earned" as it is usually accepted. It is also evident that the General Assembly would again have used the term "collected" instead of "earned" in Section 10501-5 if it had so desired to limit the total compensation to appointees of a probate court. The hardship, if any, which may eventually result from the practical application of the term "earned" is a matter over which this office has no control, but is wholly within the province of the General Assembly.

It is therefore my opinion, and you are advised, that the term "total fees earned by the probate court," as used in Section 10501-5, General Code, refers to total fees charged by the probate court for services rendered during the calendar year, whether collected or not.

Respectfully,

HUGH S. JENKINS,
Attorney General.