

1781.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, \$30,000.00.

COLUMBUS, OHIO, October 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1782.

ESTATES—UNDER SUBSECTION 48 OF SECTION 10501-42, GENERAL CODE REFERS BOTH TO ESTATES OF DECEASED PERSONS AND ESTATES OF LIVING PERSONS—PROBATE JUDGE FEE LIMITED TO TEN DOLLARS, WHEN.

**SYLLABUS:**

*The word "estates" as used in Subsection 48 of Section 10501-42 of the General Code, refers both to the estates of deceased persons as well as to estates of living persons in guardianship or trusteeship proceedings under proper jurisdiction of the probate court, where the assets of such estates do not exceed five hundred dollars in value. As a consequence, the ten dollar limitation contained in Sub-section 48 of Section 10501-42, General Code, applies to the total amount of fees chargeable by a probate judge against such estates, the assets of which do not exceed five hundred dollars in value, regardless of the nature or number of independent proceedings which may be involved in the administration of such estates.*

COLUMBUS, OHIO, October 26, 1933.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Under date of December 5th, 1932, you rendered an opinion to Harry N. Miller, the prosecuting attorney at Gallipolis, Ohio, in which Section 10501-42 of the New Probate Code was interpreted to mean that in guardianships in which the ward's estate is not over \$500.00, that the probate court could not tax more than \$10.00 court costs.

There were some cases in this county in the settlement of decedent's estates which had less than \$500.00 in assets in which the court made a charge in excess of \$10.00. Since your former opinion above referred to does not specifically mention decedent's estates, there is some doubt as to whether or not the limitation applies in them as well as in guardianship proceedings."

I am also in receipt of a similar request from the Prosecuting Attorney of Ashland County, and take the liberty of answering both requests in the same opinion since both involve the interpretation of the word "estates" as used in Sub-section 48, of Section 10501-42, General Code.

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 and shall be in full for all services rendered in the respective proceedings.

\* \* \* \* \*

48. Provided, however, that in estates the assets of which do not exceed five hundred dollars in value the *total* fees of the probate judge chargeable against such estates shall not exceed \* \* \* \$10.00." (Italics the writer's.)

My immediate predecessor in Opinions of the Attorney General 1932, Vol. III, page 1324, held as disclosed by the syllabus:

"The ten dollar limitation contained in Section 10501-42, Sub-section 48, General Code, applies to the total amount of fees chargeable by a probate judge against an estate, the assets of which do not exceed five hundred dollars in value, regardless of the nature or number of independent proceedings which may be involved in the administration of such estate."

The word "estates" as used in the above section is without any restriction or qualification whatsoever. My predecessor has ruled in the above opinion that it applies to all guardianship proceedings where the ward's estate does not exceed five hundred dollars. I concur in the holding of that opinion that the above-mentioned Sub-section 48 of Section 10501-42, General Code, applies to the estates of living persons, that is to guardianship and trusteeship proceedings under the jurisdiction of the probate courts. Furthermore I am unable to see any reason why it does not also include the estates of deceased persons. It is apparent from the reading of this section of the General Code that the limitation on the total amount of the fees of the probate judge chargeable against such estates, the assets of which do not exceed five hundred dollars, shall be only ten dollars. It is my opinion, following that of my predecessor, that such limitation of the amount chargeable applies regardless of the nature and number of independent proceedings which may be involved in the administration of such estates.

Specifically answering your inquiry and that of the Prosecuting Attorney of Ashland County, it is my opinion that:

The word "estates" as used in Sub-section 48 of Section 10501-42 of the General Code, refers both to the estates of deceased persons as well as to estates of living persons in guardianship or trusteeship proceedings under proper jurisdiction of the probate court, where the assets of such estates do not exceed five hundred dollars in value. As a consequence, the ten dollar limitation contained in Sub-section 48 of Section 10501-42, General Code, applies to the total amount of fees chargeable by a probate judge against such estates, the assets of which do not exceed five hundred dollars in value, regardless of the nature or number of independent proceedings which may be involved in the administration of such estates.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*