

OFFICIAL OPINION NO. 36

April 8, 1946.

Mr. C. E. Ruston, State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Sir:

I have received your letter requesting an official opinion on the following questions:

"1. Do the provisions of Chapter 157, Acts of 1945, change or otherwise affect the taxing of clerk's service fees to be taxed and collected by clerks of the circuit courts in court trusts:

"(a) In trusteeships?

"(b) In administration of estates, in guardianships, and in receiverships, assignments and surviving partnerships?"

Chapter 157 of the Acts of 1945 is an act concerning accountings by trustees under wills, deeds and agreements, court procedure, hearing, judgment, appeal and costs thereon, and repeals all acts and parts of acts in conflict therewith. Approved March 5, 1945.

Section 1 of this Act provides that a trustee shall mail and deliver at least annually to each adult income trust beneficiary a written and itemized statement, and so forth. Section 2 of this Act provides that any trustee or trustees, whenever it or they so desire, may file in the court having jurisdiction of such trust an intermediate account under oath showing certain things. Section 3 of this Act provides that, upon the petition of any settlor or any beneficiary of the trust after due notice to the trustee, the court having jurisdiction of trusts in the county where the trustee resides may direct the trustee or trustees thereof to file in said court such an account at any time subsequent to one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust.

Section 4 provides that upon the filing of such an account, the trustees shall cause due notice to be given and fix a return

day of not less than ten days thereafter in order to give the beneficiaries an opportunity to file any objections or exceptions to the report. Section 5 provides that upon the return day any beneficiary may file his written objections or exceptions to the account, and so forth. Section 6 provides that on the return date or at some later date fixed by the court, the court, without the intervention of a jury and after hearing all the evidence, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees, and so forth, either approving or disapproving the report or any part thereof, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. Section 7 provides that the judgment so rendered shall be deemed final and conclusive to all parties and subject only to the right of appeal.

Section 8 of said Act provides for an immediate appeal, and Section 10 of said Act, upon which your question is based, is as follows:

“Upon entry of the judgment by the Court the matter shall be deemed finally disposed of and no service fee shall be taxed and charged by the Clerk for any year additional to that in which such judgment was rendered.”

Chapter 131 of the Acts of 1927, same being Section 49-1301 of Burns' R. S. 1933, is an act fixing certain fees to be taxed and collected by the Clerks of the Circuit Courts. Section 1 thereof provides the amounts of Clerk's service fees to be taxed and collected by the clerks of the court in court trusts including administration of estates, guardianships, receiverships, assignments, *trusteeships* and surviving partnerships, based upon the period the trust has been pending upon the records. This section provides that in the case of assignments, trusteeships, etc., where the inventory is of \$1,000.00 or less, first two years or part of same, \$5.00; where the inventory is of more than \$1,000.00 and not more than \$5,000.00, first two years or part of same, \$7.00, and so forth. This section also provides that in each instance, however, that for each additional year there shall be a certain service fee.

It is my opinion that the only portion of this general Clerk's Fee Act which is affected by Chapter 157 of the Acts of 1945 is that portion of the Fee Act which applies to an additional service fee for "each additional year or part of year." In other words, in each case under Chapter 157 of the Acts of 1945 wherein it is necessary under the Act for the trustee either on his own motion, by order of the court, or upon the petition of any of the beneficiaries to file a report upon which a notice is given, a return date fixed, and the court has a hearing thereon and enters a judgment, then and only then, in such cases where the court has a hearing and renders a judgment is the clerk entitled to the fee set forth under Section 1 of Chapter 131 of the Acts of 1927.

In no event in any trust which is included under the provisions and terms of Chapter 157 of the Acts of 1945 is the clerk entitled to charge any fee except in those years when such a judgment is rendered, as is hereinabove set forth and described and designated under Section 10 of Chapter 157 of the Acts of 1945. The clerk is not entitled to any service fee in the intervening years between the judgments referred to under Section 10 of Chapter 157 of the Acts of 1945.

In reply to 1 (b) of your letter, it is my opinion that Chapter 157 of the Acts of 1945 has no effect whatsoever upon the clerk's fees chargeable in the administration of estates, guardianships,* receiverships, assignments or surviving partnerships. The title of Chapter 157 restricts it to trusts "under wills, deeds and agreements." The charging of service fees by the clerk is only modified to the extent as hereinbefore set out in reply to your question 1 (a).

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April 8, 1946.

Hon. Mount Willis, Secretary,
 Indiana State Board of Barber Examiners,
 141 South Meridian Street,
 Indianapolis 4, Indiana.

Dear Sir:

Your letter of April 4, 1946, received requesting an official opinion as to whether or not the State Barber Board may