

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

There is no requirement that the *person* nominated by written designation have any specified relationship to the member. Therefore, the divorced wife, being the *person* nominated by written designation of the member is entitled to a refund of the deceased's contributions.

Question: The member also had group life insurance but did not designate a beneficiary. Who may properly claim the group life insurance?

Answer:

Chapter 63, section 24, III, designates the persons eligible to receive the deceased's group life insurance.

1. Designated beneficiary. — There is none.
2. If no designated beneficiary, the widow. — There is none as the couple were divorced prior to the member's death. The divorced wife is not his widow.
3. If none of the above, children. — There are none.
4. If none of the above, the parents. — Parents are deceased.
5. If none of the above, executor or administrator of deceased's estates.
6. If none of the above, next of kin entitled under the laws of domicile of the deceased at time of his death.

The only possible eligibles are #5 and #6. If no executor or administrator is appointed, payment would go to persons qualifying under #6.

An estate may be administered any time within 6 years after death, if there is no will. If the deceased left a will, it may be probated any time within 20 years of the death.

An executor or administrator duly appointed within these time limits would be entitled to payment of the group life insurance. Payment to next of kin, under #6, would not relieve the trustees of responsibility of payment to an executor or administrator.

Therefore, it would be inadvisable for the trustees to pay out any money under the sixth provision of section 24, III, within these time limits.

GEORGE C. WEST

Deputy Attorney General

September 25, 1962

To: Ross Parsons, Deputy State Auditor

Re: Clerk of Courts Naturalization Fees

You have verbally requested an opinion as to whether or not a Clerk of Courts may retain naturalization fees or if they must be turned over to the county treasurer.

The Clerk of Courts does not turn over to the County Treasurer any portion of naturalization fees. Revised Statutes 1954, chapter 89, section 98, reads in part:

“The clerks of the judicial courts in the several counties shall receive annual salaries as set forth in section 254.

“The salaries of the clerks of the judicial courts shall be in full compensation for the performance of all duties required of clerks including those performed by them as clerks of the supreme judicial court, the superior court and the county commissioners, or by clerks pro

tempore employed by them. . . . They shall account quarterly under oath to the county treasurer for all fees received by them or payable to them by virtue of the office, *except fees collected by them in naturalization proceedings*, specifying the items, and shall pay the whole amount of the same to the treasurers of their respective counties quarterly on the 15th days of January, April, July and October of each year.” (Emphasis supplied.)

This section as it appears in Revised Statutes, chapter 89, was repealed and replaced by Public Laws 1959, chapter 372, section 2. There have been no subsequent amendments.

Chapter 89, section 254, sets forth the salaries of all county officers and municipal court judges and recorders. In addition, this section provides in the last paragraph:

“After January 1, 1962 all fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officer, shall be payable by them to the county treasurer for the use and benefit of the county, but preserving the right of sheriffs and their deputies not on a salary” (Emphasis supplied.)

This part of section 254 quoted above was enacted by Public Laws 1959, chapter 372, section 7. Thus it appears that sections 98 and 254 were enacted by the legislature in the same bill.

It might appear there is a conflict between sections 98 and 254 as to the Clerk of Courts retaining naturalization fees. However, Title 8, section 1455 of the United States Code provides that the clerk of any naturalization court shall account and pay over to the Attorney General (United States) one-half of all fees up to the sum of \$6,000 and all fees in excess of \$6,000 collected in naturalization proceedings in any fiscal year. Thus, the Federal law allows the clerk to retain a portion of the fees collected.

Consequently, the provision of section 98 was written carrying out the Federal law. Section 254 must be read with the Federal law in mind. Clerks of Courts may retain their proper share of naturalization fees as set forth in Title 8, section 1455, of the United States Code.

GEORGE C. WEST

Deputy Attorney General

September 27, 1962

To: Richard E. Reed, Executive Secretary, Sardine Council

Re: Replacement of broken glass in premises leased by Maine Sardine Council

In your memo of September 24th you inquire whether the Maine Sardine Council is obligated to replace a plate glass window at its leased building at 114 Exchange Street, Bangor, where the window was broken by a third person.

Responsibility is determined by the terms of the lease, which you state contains a clause that “all glass broken in said premises during this lease to be replaced by said lessee, said glass now being whole.” Since no exceptions to the lessee’s liability appear in the lease, the Council is obliged to replace at its expense all glass broken from whatever cause. If you should be able to identify the