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September 24, 1975

Robert G. Redman, Director of Audits

Audit

Leon V. Walker, Jr., Assistant

Attorney General

Fees of office of Register of Probate, Cumberland County

You ask 3 questions regarding the fees of office of Register of Probate, with particular reference to the Cumberland County Register:

1. Is the Register of Probate of Cumberland County required to remit publication fees to the County Treasurer as part of his regular fees effective July 1, 1973?
2. Should all Registers of Probate be remitting the publication fees to their respective County Treasurers?
3. If yes to either of the above, should the County Treasurer be responsible for the paying of the advertising fee to various newspapers rather than the Register of Probate?

1. The answer to question 1 is yes, affirming the Attorney General's letter of November 13, 1973, to Mr. William B. Hughes, Register of Probate, Cumberland County, copy of which is in your files.

This is not in conflict with the opinion of this office expressed in a memorandum to the Director of Audits dated October 20, 1966, for the reason that at that time 30 M.R.S.A. § 2 provided that "all fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officers, shall be payable to the county treasurer.", whereas when the letter of November 13 was written to Mr. Hughes, section 2 had been amended to provide that Cumberland County officers must pay such fees to the County Treasurer.

That letter is also not in conflict with the May 18, 1966 letter from this office to Attorney John Flaherty, because the fees there involved were not for notices required by statute to be published by Registers of Probate under 18 M.R.S.A. § 203, but involved expenses for publication of notices which were required of executors, administrators, etc. The keeping of overcharges above the cost of such publication by the Registers (who handle such publications for them) was in violation of 18 M.R.S.A. § 251, which provided (and still provides) that the salaries of the Registers of Probate shall be in full compensation for the performance of all duties required of Registers of Probate.

2. The answer to question 2 is no. Under the aforesaid statutes, Cumberland County was the only county where the register of Probate was required to remit such fees. By P.L. 1973, ch. 540, (effective July 1, 1974) the Register of Probate of Kennebec County, was placed under the same duty to remit. The Registers of the other counties are only bound by the previous paragraph of Title 30 § 2, which excepts from the duty of county officers to remit all fees and charges, "charges for the publication of notices required by law."

3. The answer to question 3 is yes, as it pertains to Cumberland and Kennebec counties. See Attorney General's letter of November 13, 1973, referred to above. In the other Counties, the cost of publication is paid by the Registers of Probate.

LVWJr/mf

Leon V. Walker, Jr.

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