

OPINION
47-76

March 21, 1947 (OPINION)

COUNTY COURT

RE: Fees In

This will acknowledge your letter of March 14, 1947, in which you state that you have received a copy of Senate Bill No. 151 regarding the collection of filing fees in district and probate courts. I note that you take the position that heirship proceedings do not come within the provisions of this law.

Section 5 of the act, amending section 27-0740 of the 1943 Revised Code, reads as follows:

"Before a petition for letters testamentary, of administration, or guardianship is filed in a county court of this state, the petitioner, or someone on his behalf, shall pay a filing fee of seven dollars and fifty cents into the county treasury of the county in which the court is located."

Section 6 of the Act, amending section 27-0741 of the 1943 Revised Code, insofar as is pertinent, reads as follows:

"When a filing fee for an estate or for a guardianship is paid to the treasurer of the proper county, he shall execute therefor duplicate receipts one of which shall be filed with the county auditor and one with the judge of the county court. * * * *"

The question arises as to whether or not under the terms of these two amendments an heirship proceedings deals with an estate. In the past, the county courts have collected the same filing fee for the filing of a petition for heirship as were collected for filing of letters testamentary or letters of administration.

Section 27-0706 of the 1943 Revised Code states:

"The county court of a county shall have jurisdiction to take the proof of a will and to grant letters testamentary, to grant letters of administration, or to determine heirship, as the case requires, if:

1. The decedent at the time of his death was a resident of such county, whether his death happened there or elsewhere;
2. There is property within such county which remains unadministered and if the decedent at the time of his death was not a resident of this state, no matter where the death occurred; or
3. The application therefor was first made in such county and if the jurisdiction as defined in the preceding subsection of this section might be in two or more counties."

It is apparent that the jurisdiction of the county court to entertain heirship proceedings is on the same basis as its jurisdiction to deal with letters of administration, letters testamentary, and guardianship. Heirship proceedings are a probate matter and in the determination of the heirship proceedings the county court makes a finding as to who the heirs are and the shares to which each heir is entitled under the law of succession in the property of the decedent.

On the basis of the custom of the county courts throughout the state, as far as I have been able to determine, no distinction has been made between an heirship proceeding and other probate proceedings as far as the filing fee was concerned, and although section 27-0740 of the 1943 Revised Code does not specifically mention heirship proceedings, it has been interpreted to include them and filing fees have been charged on the same basis for heirship proceedings as other probate proceedings.

Accordingly, it is my opinion that heirship proceedings are within the terms of sections 5 and 6 of Senate Bill No. 151, and that you should charge filing fees for heirship proceedings in the sum of \$7.50 for each heirship proceedings.

NELS G. JOHNSON

Attorney General