

OPINION
50-59

February 21, 1950 (OPINION)

ESTATES

RE: State's Attorney's Fees

Re: Administration of Estates of Decedents Leaving No Known Heirs -
Sections 30-2501, 30-2502, 11-2105.

You state that one Thomas B. Scannell died intestate in your county, leaving property, but no known heirs. You state that as state's attorney you took charge of the estate and proceeded with the administration. You state that the time for filing claims has expired and that every effort has been made to locate heirs but with no success.

You ask whether or not you are entitled to charge and collect an attorney's fee for your services, since you are the state's attorney.

Section 30-2501 N.D.R.C. 1943 makes it the duty of the state's attorney in such a case as you state to petition for administration of such estate. Section 30-2502 provides that "the public administrator of the county or any other competent person may be appointed administrator."

Section 11-2105 N.D.R.C. 1943 provides that the public administrator shall take charge of an estate "when a person dies intestate in the county without relatives or known heirs."

Section 11-2108 provides that "the public administrator shall receive the same compensation for his services as is allowed by law to executors, administrators, and guardians, unless the court, for special reasons, allows a higher compensation."

The next section provides that the public administrator may not charge "a fee as an attorney in the administration of the estates of decedents of which he shall be the administrator." This last provision does not, in our opinion, mean that he may not employ an attorney to assist him in the administration of an estate, but it means that he may not act as both administrator and attorney and collect a separate fee in each capacity.

Therefore, it is our opinion that if you, in the instant case, acted as administrator, you are entitled to such fee as the public administrator, or any other administrator would have been entitled to; and if the public administrator or any other person than yourself was appointed administrator and you acted as his attorney, you would be entitled to the same entitled to. You could not receive a fee in the two capacities.

Presumably these fees would come from the estate.

WALLACE E. WARNER

Attorney General