



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

June 28, 1947

Honorable John H. Winters, Executive Director
State Department of Public Welfare
Austin, Texas

Opinion No. V-273

Re: Court costs in a proceeding to appoint guardians to collect old age assistance where such a grant exceeds forty dollars per month.

Dear Sir:

We refer to your letter of June 4, 1947, in which you request answers to the following:

1. May probate courts order that no costs or fees shall be charged in a proceeding to appoint a guardian to receive Old Age Assistance compensation from the State and/or Federal Government in excess of Forty Dollars per month?
2. If the Courts may not waive the court costs if the grant exceeds Forty Dollars per month does this mean that the department must, in each instance, establish the amount of the grant before the Court can decide whether or not the court costs may be waived?

Probate Courts are not authorized to order that no costs or fees shall be charged in probate proceedings in the absence of a law authorizing such an order. The law pertinent to your inquiry is Article 4123a-1 of Vernon's Civil Statutes, which reads:

"Whenever a guardian is appointed for the purposes of enabling a person to receive not more than Forty (\$40.00) Dollars a month from the State and/or Federal Government, the Court may, in its discretion, order that no costs or fees shall be charged in connection with the proceeding."

The statute is a grant of power to the probate court to order that no costs shall be charged in such proceedings. The language of the law is plain and unequivocal and such power may not be enlarged by construction. It is limited to cases where the grant is under Forty Dollars per month.

We are of the opinion that probate courts are not authorized to order that no costs shall be charged in a proceeding to appoint a guardian to receive Old Age Assistance payments from the State and/or Federal Government in excess of Forty Dollars per month.

We do not construe the law to permit a county court to decide whether the court costs may be waived until it is ascertained by such court that the compensation from the State and/or Federal Government does not exceed Forty Dollars per month. In order for the court to have the power to order that no fees need be paid, it must be established that less than \$40.00 per month is to be received. It is immaterial whether this fact is established by your department or someone else, on the hearing of the case.

SUMMARY

Probate courts are not authorized to order that no costs shall be charged in a proceeding to appoint a guardian to receive Old Age Assistance payments from the State and/or Federal Government until it has been ascertained that the grant of such payments does not exceed Forty Dollars per month. Art. 4123a-1, V.C.S.

Yours very truly

APPROVED

Price Daniel
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By

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