



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

March 16, 1949.

**Hon. J. P. Hart
County Attorney
Fayette County
La Grange, Texas**

Opinion No. V-786.

**Re: The right of the County
Judge to a commission on
actual cash receipts of a
guardian when he required
no reports or accounting
on such receipts during
the guardianship.**

Dear Sir:

**Reference is made to your recent request which
reads in part as follows:**

**"The question has arisen whether or not
the County Judge is entitled to $\frac{1}{2}$ of 1% com-
mission upon the actual cash receipts of the
guardian in the following fact situation:**

**"Over ten years ago the guardian was
appointed over his minor children by the
County Court of Fayette County, Texas, and
the guardian duly qualified at said time
and filed his inventory and appraisal,
which was approved at said time. Since
that time no annual accountings or any-
thing whatsoever was done in said guardian-
ship until the guardian on December 8, 1948,
filed a brief report showing that his wards
had now reached their majority, that he had
delivered all properties to them to which
they were entitled to and attached to said
final report a release from said wards duly
acknowledged by them in which they too state
that they have reached their majority and
have made a complete settlement with their
said guardian, and specifically release
him from all further liability by virtue
of said guardianship. In this final report
of the guardian nothing whatsoever is shown
as to what the actual cash receipts of such**

guardian were during such guardianship. I am herewith enclosing a copy of such final report of said guardian, to which was attached the release of the former wards. The Court acted on this final report and release of the wards thereto attached, and closed the guardianship, and fully discharged the guardian. All Court costs incident to this closing of the guardianship have been paid by the guardian with the exception that the question has arisen as to whether or not the County Judge is entitled to $\frac{1}{2}$ of 1% of the actual cash receipts of such guardian during such guardianship. Even though such final report of the guardian does not show it, the guardian actually did have some cash receipts during said guardianship."

The pertinent portion of Article 3926, V. C. S., is as follows:

"The county judge shall also receive the following fees:

"1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian."

The case of Grice v. Cooley, 179 S. W. 1098, is authority for the proposition that the word "exhibit" as used in the above article includes annual accounts. It is also stated in the above cited case that:

". . . By article 4186, R. S. 1911, guardians are required to present an annual account under oath showing, among other things, 'a complete account of receipts and disbursements since the last annual account.' Upon presentation of such annual account, it is by subsequent provisions of the statutes made the duty of the then

presiding county judge to conduct a hearing thereon, and, if he is satisfied that the account is correct, it is his duty to approve same. Having made it the duty of the county judge to approve such accounts, and having allowed a fee of one-half of 1 per cent upon the 'actual cash receipts' shown thereby, it surely follows, it seems to us, that the commissions are payable upon such approval, for the reason that they were clearly intended for the benefit of the officer performing the duty, . . . "

In A. G. Opinion No. 2692, dated May 19, 1927, the question was asked:

". . . where a Guardian collects money from 1924 to December 31, 1926, during the Ex-County Judge's administration, and makes no report to the County Judge until the present County Judge took office, January 1, 1927, which one of the two judges is entitled to the one-half of one per cent?

"Is the former Judge who looked after all the approval of orders conveying deals during the collection or is the Judge in office who has approved the exhibits entitled to the one-half of one per cent. No report was made during 1924, 1925, 1926 as required by law, and none made until the present County Judge took office and required it."

It was held that the County Judge who required the annual accounts to be filed and then approved them was entitled to the fee. In this opinion it is further stated that:

"We are conscious that the effect of this holding is to deprive the Ex-County Judge of compensation for a certain amount of labor performed by him, but we are less troubled by this when we take into consideration the fact that had he enforced the provisions of Chapter 9, Title 69 of the Revised Civil Statutes, he would have received this compensation. We realize also

that the effect of this holding is to grant to the present County Judge compensation for a certain amount of labor which he did not perform, but we are less concerned with this because it appears that the present official did compel the guardian to comply with Chapter 9 aforesaid, and file the reports thereby required."

There was no annual account filed as required by law nor were any cash receipts shown in the final account. In view of the foregoing, it is our opinion that the County Judge is not entitled to the one-half of one per cent commission under Article 3926.

SUMMARY

Where no annual account was filed, and no cash receipts were shown in the final settlement of a guardianship, the County Judge is not entitled to the one-half of one per cent commission under Article 3926, V. C. S.; Grice v. Cooley, 179 S. W. 1098; A. G. Opinion No. 2692.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
Bruce Allen
Assistant

APPROVED


FIRST ASSISTANT
ATTORNEY GENERAL