



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 19, 1958

*Overruled by
C-272
where conflicts*

(N)

Honorable Tom Moore, Jr.
District Attorney
Waco, Texas

Opinion No. WW-502

Re: Interpretation of Section
1, Article 3926, Vernon's
Civil Statutes, regarding
fees of County Judges.

Dear Mr. Moore:

We have received your letter of August 5, 1958, in which you request our opinion on the following question:

"The estate of the late Madison Cooper of this County consisted, among other things, of several hundred thousand dollars in various stocks and bonds. During the course of administration of the estate, the executor sold some of these in the amount of \$515,114.44. This money was later invested in other stocks and bonds. Our County Clerk has assessed a fee of $\frac{1}{2}$ of one per cent against the proceeds of these sales under Article 3926, V.R.C.S. The attorney for the estate disputes this charge and we have been asked to seek your opinion. . . ."

You included with your request a copy of the executor's verified account for final settlement which reflects the properties in question included corporate stocks and stock rights, corporate bonds, municipal and other political subdivision bonds, certificates of deposits and United States Government Bonds. You desire to know if the County Judge, under Section 1 of Article 3926, Vernon's Civil Statutes, may tax a commission of one-half of one percent upon the funds realized from the sale of such properties when such funds are later used to purchase similar properties.

Section 1 of Article 3926 reads 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

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of the exhibits and the final settlement of the account of such executor, administrator or guardian." (Emphasis added)

We have assumed that such securities were held by the testator as part of the corpus of his estate at the time of his death, and, further, that such securities (the ones later sold) were held by the estate when the executor qualified. Since we have no information before us on how the securities were originally inventoried upon probate of the will, nor what values were assigned thereto, we can give you only what we consider to be the general principles applicable here.

In Attorney General's Opinion V-398 (1947), it was determined that when a personal representative cashes United States Government Bonds, he is merely exchanging one form of government obligation for another, and that, therefore ". . . such sums should be classified as cash on hand at the time of the death of the testator, and the County Judge is not entitled to any fees under Article 3926 on said sum." Such opinion cites as its authority Terrill v. Terrill, 189 S.W.2d 877, writ refused, which reached such result on the question of cashing Savings Stamps, United States Post Office. Such is the rule when these obligations are cashed, as distinguished from being sold.

In Attorney General's Opinion O-5654 (1943), it was determined that cash received as "liquidating dividends" was taxable under Section 1 of Article 3926. The amount there under consideration was in excess of the inventoried value of stock owned in a lumber company and such opinion was concerned only with the amount so received in cash. The cash received represented increase accruing to the estate during the course of administration. We feel such opinion correctly states the law applicable to the question there under consideration. There is language in such opinion, however, that might be construed as holding that the County Judge would be entitled to such commission on all money collected when property constituting original corpus of the estate is sold for cash, even if the amount received equaled or was less than the inventoried values. We do not feel such an expanded construction of the opinion would be a correct statement of the law. Opinion O-5654 relies in part on Goodwin v. Downs, 280 S.W. 512, (Comm.App.) which is authority for the proposition that all funds received by the representative pursuant to completion of the decedent's contract would be so taxable and not just that amount representing profit to the estate. We do not believe such case controls the question of the conversion of a portion of the corpus of the estate into another form of asset.

The case of McCrorry v. Wichita County, 261 S.W.2d 867, establishes that the words "actual cash receipts" as used in Article 3926 do not contemplate a commission to be paid on any and all money that may be collected by the executor:

"We believe that the expression 'actual cash receipts' has a more restricted meaning than 'cash actually received'. In the first expression, 'actual cash' describes 'receipts', while in the second, 'actually received' describes 'cash'. Cash may be capital, or the corpus of an estate, while the word 'receipts' is synonymous with 'income', 'issue', 'product', 'yield', 'returns', and 'proceeds' And the term 'proceeds' has been defined as '. . . "the amount proceeding or accruing from some possession or transaction." . . . !"

Also, see Willis v. Harvey, 26 S.W.2d 288, which states:

". . . It is thought the term 'actual cash receipts' should be held to specifically describe money received by the executor other than the cash or corpus of the estate which was on hand when the testator died, because the words used point to and imply that meaning. . . ." (Emphasis added)

In the case of Gilbert v. Hines, 32 S.W.2d 876, the following statement is made which we feel accurately disposes of the question here under consideration:

"We, therefore, hold that the claim for war risk insurance was a part of the corpus of the estate, and, when this claim was later converted into money and paid to the guardian, its status, as a part of the corpus of the ward's estate, was unchanged, and no commissions to the guardian could be allowed thereon." (Emphasis added)

In addition, the McCrorry case cited above, states:

"It would be the same estate in a different form, and would be only once received."

We, therefore, conclude that when assets constituting a portion of the original corpus of an estate are sold, the cash received therefor is not such "actual cash receipts" as would be taxable with a Judge's commission under Section 1 of Article 3926, if the money received did not exceed the inventoried value of such assets. The same rule would apply to the sale of United States Government bonds and obligations, as

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(N) distinguished from the cashing of such obligations. Cash received representing increase over the inventoried value of such corpus would, of course, have accrued during administration and would be taxable.

SUMMARY

Under Section 1 of Article 3926, Vernon's Civil Statutes, when securities constituting original corpus of the estate are sold by an executor, the County Judge may receive commissions on only that portion of the cash so received which represents increase over the inventoried value of the securities; the same rule applies when United States obligations are sold, as distinguished from cashed.

Yours very truly,

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By 
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APPROVED:
OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert