



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Jesse James  
State Treasurer  
Austin, Texas

Dear Mr. James:

Opinion No. 0-6303  
Re: Sufficiency of judgment of  
County Court to authorize the  
State Treasurer to pay out funds  
available in the Estate Fund in  
the Treasurer's hands.

Your request for an opinion upon the above subject  
matter is as follows:

"We are attaching hereto Order No. 8539  
of the County Court of El Paso, Texas, signed  
by M. Scarbrough, Judge of Probate Court of  
El Paso County, Texas, authorizing the pay-  
ment of \$3,854.95 deposited with Charlie Lock-  
hart as State Treasurer, for the estate of Ash-  
er Cooper, deceased, December 29, 1932, to  
Loomis and Kirkland, Attorneys, El Paso, Texas.

"Provided these funds are now available  
for payment, is it your opinion that the en-  
closed Court Order constitutes sufficient  
authority to justify payment as ordered?"

"If payment is so made is the State Treas-  
urer relieved of responsibility to the heirs  
named in the order or any others that might ap-  
pear in the future?"

The following Articles of the Revised Civil Statutes  
are pertinent:

"Article 3652. When funds of an estate have  
been paid to the State Treasurer, any heir, devisee  
or legatee of such estate, or their assignees, or  
any of them, may recover the portion of such funds  
to which he or they would have been entitled."

"Article 3653. The person claiming such funds shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the State Treasurer, setting forth the petitioner's right to such funds, and the amount claimed by him."

"Article 3654. Upon the filing of such petition, the Clerk shall issue a citation for the County Attorney of the county or the District Attorney of the district to appear and represent the interest of the State in such suit, and it shall be the duty of such County or District Attorney to do so."

"Article 3655. The proceedings in such suit shall be governed by the rules for other civil suits; and should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the Treasurer to pay the same."

With respect to the validity of such judgment, involving as it does, a suit in the County Court to recover the sum of \$3,854.95, we beg to advise that the statute authorizing the County Court to exercise jurisdiction has been upheld by the Supreme Court since an early day.

In *Dodson v. Wortham, State Treasurer*, 45 S. W. 858, Justice Fly, writing the opinion for the Court of Civil Appeals, said:

"\* \* \*. In article 2211 (which is found under title 39), relating to estates of decedents, it is provided that when the funds belonging to an estate have not been claimed by heirs, and have been paid to the state treasurer by order of the county judge, that any heir, devisee, or legatee of the decedent 'claiming such funds, or any portion thereof, shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the treasurer of the state, setting forth the petitioner's right to such funds, and the amount claimed by him.' It is

evidently contemplated by this statute that the suit in question can be brought in the county court regardless of the amount, and the statute is constitutional, in case the amount should be less than \$200 or more than \$1,000, only on the ground that the county court has obtained jurisdiction of the estate by the administration, and that the suit is a matter pertaining to such administration. In this case the suit is for \$1,781.24, a matter in excess of the jurisdiction of the county court except on the ground mentioned, that it is a matter pertaining to an estate. We have found no case in this state directly in point, but in the case of Treasurer v. Wygall, 48 Tex. 447, suit was instituted in the county court for funds belonging to an estate, amounting to over \$250,000, and, although the matter of jurisdiction was not discussed, we must presume it would have been noticed had there been in the minds of the court any question as to jurisdiction. When the same case was again before the supreme court (51 Tex. 621), it was held that a judgment in favor of other heirs was res adjudicata as to Wygall, the reason given being that a proceeding like the one we are considering is one in rem, in which the parties claiming the estate should have intervened; that is to say, it was a continuation of the administration of an estate of which the county court had jurisdiction.  
\* \* \*

You are therefore respectfully advised that the County Court of El Paso County had jurisdiction to render the judgment in favor of the plaintiffs, and it remains only to be seen whether or not the order found in such judgment directing the defendant, State Treasurer, to pay said judgment to Loomis & Kirkland, attorneys of record for plaintiffs, is sufficient to authorize you to make payment directly to such attorneys.

We have carefully examined the authorities with respect to this question. There is much uncertainty in the law as to this point. Of course, such attorney may be clothed with such power in the contract of employment, or he may otherwise have such power conferred upon him. We have nothing to show that such actual authority has been conferred upon attorneys for plaintiffs in this instance.

We note the order of the judge is "that the amount hereinafter awarded and set forth, be paid to Loomis & Kirkland, attorneys of record for plaintiffs, who are authorized to sign receipts therefor on receipt of same from the defendant."

It is our opinion, however, this language adds nothing to the legal effect of the general judgment for the plaintiffs. Such matter was not an issue for the court to determine, and the order itself as such has no binding force. Orders made beyond the issues before the court are not for adjudication. The plaintiffs and their attorneys were, of course, not adversary parties.

Furthermore, it appears the application upon which the judgment here under consideration was rendered was filed originally on December 8, 1937, and the judgment rendered bears date August 25, 1944. There are ten different plaintiffs named. Whether or not these plaintiffs are still living is not shown. Whether or not they or any of them have heretofore assigned such judgment is not shown. The lapse of time even since November 5, 1940, at which time the court recites that depositions were read and oral testimony heard has been unusual.

In view of all the facts surrounding this situation, it is our opinion, and we so advise, that you should not pay the judgment to the attorneys for the plaintiffs. Their authority to make such collection may in fact exist, but the matter is not made to appear with sufficient clarity as to authorize you to make payment.

We suggest that you make payment of the judgment by regular treasurer's warrants made payable to the respective plaintiffs in the amounts, respectively, due them, and transmit these warrants to the Clerk of the County Court of El Paso County at El Paso, endorsing upon each such warrant the judgment in payment for which it is issued.

Very truly yours

APPROVED DEC 12, 1944  
/s/ Charles C. Ashley  
FIRST ASSISTANT ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By

/s/Ocie Speer  
Assistant

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APPROVED OPINION COMMITTEE BY /s/ G. W. B., CHAIRMAN