



PRICE DANIEL  
ATTORNEY GENERAL

## THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

October 3, 1947

Hon. Ben J. Dean  
District Attorney  
Stephens County  
Breckenridge, Texas

Opinion No. V-398

Re: Fees of a County Judge  
when an administrator of  
an estate being probated  
cashes United States Gov-  
ernment Bonds.

Dear Sir:

Your request for an opinion from this office on the above subject matter is in part as follows:

"In the light of the foregoing authorities and opinions of the Attorney General, please advise whether or not the County Judge of Young County is entitled to collect one-half of one per cent fees where the Administrator of an estate in that County has cashed United States Government E Bonds and United States Government G Bonds belonging to such estate so administered in the probate court."

We quote the following pertinent statutory provisions:

"Art. 3926.

"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. . . ."

"Art. 3689.

"Executors and administrators shall be

entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay out in cash in the course of their administration."

"Art. 3690.

"A commission shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor a commission for receiving money realized from the sale of property to satisfy debts against the property and the paying out of the proceeds in satisfaction of the debt except as to the amount realized from the sale in excess of the debt, nor for paying out money to the heirs or legatees as such. Provided, however, that if the administrator or executor shows to the court that the value of the service rendered the estate in making a sale of property securing a debt exceeds the amount of the commission calculated as above provided, then the court shall allow a commission for a just amount. The amount not to exceed that now allowed by law."

In construing the above quoted statutory provisions, it was held in *Willis v. Harvey*, 26 S. W. (2d) 288, writ refused, that there is no difference in the meaning of the terms "actually received in cash" as used in Article 3689 and "actual cash receipts" as used in Article 3926. It was further held that the "receipts" did not embrace cash on deposit in the bank at the death of the testator.

It was held in *Terrill v. Terrill*, 189 S. W. (2d) 877, writ refused, that Postal Savings Stamps owned by testatrix at the time of her death should be classified as "cash on hand" within the meaning of Article 3690 instead of "sums actually received in cash" within the meaning of Article 3689. We quote the following from the *Terrill* case:

"It seems that the executor did not claim a commission upon the \$600 in his itemized report to the legatees of the estate. The County Court held, however, that he was entitled to retain five per cent of said amount. In this

holding the Court erred. This \$600 was in the form of Savings Stamps, United States Post Office, which were purchased by decedent and held by her at the time of her death. These stamps were an obligation of the United States Government, payable upon demand. The executor did not sell these stamps but cashed them. He merely exchanged one form of a government obligation for another. We think this \$600 in Savings Stamps is properly classified as cash on hand at the time of the death of the testatrix within the meaning of Article 3690, Vernon's Ann. Civ. Stats."

Following the reasoning in the Terrill case, it is our opinion that when the Administrator of an estate cashes United States Government Bonds, he merely exchanges one form of a government obligation for another. 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.

Attorney General's Opinion No. 0-5704, which was written prior to the holding of Terrill v. Terrill is hereby overruled.

SUMMARY

A County Judge is not entitled to fees or commissions under Article 3926 when the Administrator of an estate being probated cashes United States Government Bonds. Terrill v. Terrill, 189 S. W (2d) 877, writ refused.

Yours very truly

APPROVED:

ATTORNEY GENERAL OF TEXAS

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL

By *John Reeves*  
John Reeves  
Assistant

JR:djm