

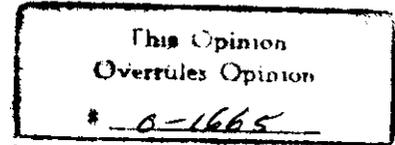


**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 9, 1959



0-5495

Mr. Charles J. Lieck, Jr.
Criminal District Attorney
Courthouse
San Antonio, Texas

Opinion No. WW-664

Re: Whether payments from Workmen's Compensation and Social Security benefits received by a ward, arising out of the death of her father, are subject to the payment of commissions to the County Judge under the provisions of Article 3926, Vernon's Civil Statutes.

Dear Mr. Lieck:

We quote from your letter of June 5, 1959:

"In an estate of a minor, the Probate Clerk has presented a bill of costs which includes County Judge's Commission of $\frac{1}{2}$ of 1% on the amount shown as receipts in the annual account filed in this estate. This fee has been taxed as part of the costs on the ward's receipts from Workman's Compensation Claim, payable on the death of her father, and the ward's interest in Social Security benefits by reason of her father's death.

"I request an opinion from you on the following question:

"Do the payments from a Workman's Compensation Claim, payable on the death of the father, and the ward's interest in Social Security benefits by reason of the father's death, represent corpus of the estate or income?"

Section 1 of Article 3926, Vernon's Texas Civil Statutes, provides 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." (Emphasis ours.)

In Anderson v. Steddum, 194 S.W. 1132 (Civ. App. 1917, affirmed by memo opinion, 222 S.W. 1090 [Comm. App. 1920⁷]) it was held that a pension paid to a ward under the laws of the United States was not income to the estate but the corpus of same, and that, therefore, the guardian could not expend such moneys for education and maintenance of the ward without an order of the Probate Court. The Court stated at page 113⁴ of the opinion:

" . . . As appellee owned nothing except ~~the pension money~~, unless that was an estate he owned nothing from which an income could arise. If it was an 'estate,' and, clearly, it was, of course it was not 'income of an estate' . . . for it could not be 'income from an estate' if it was the estate itself. It follows, we think that the fund in appellant's hand as [sic] not 'income' of appellee's estate, . . . "

Later in Goodwin v. Downs, 280 S.W. 512 (Comm. App. 1926) it was held that the County Judge was entitled to a commission upon money received by an administrator in the fulfillment of a road construction contract of the deceased. The cash receipts from the contract were viewed as income. It is important to note that at the time the administration was taken out the construction contract had been entered into by the deceased, but not performed. The work was performed and the contract completed at the instance of the administrator after the commencement of the administration.

The facts presented by your request are unlike the situation before the Court in Goodwin v. Downs, supra, because here the circumstances which gave rise to the claims materialized prior to the commencement of the guardianship. In the instant situation the death of the father prior to the guardianship created a right on the part of the ward to claim the Workmen's Compensation benefits and the Social Security benefits. In Goodwin v. Downs, supra, the right to claim the benefits of the construction contract did not accrue until the work was performed and the contract completed during the administration.

Thereafter, in Willis v. Harvey, 26 S.W.2d 288 (Civ. App. 1930, error ref.) a County Judge was denied a commission on cash on deposit in a bank to the credit of the testatrix at the time of her death.

Monthly disability payments from the United States Veterans' Administration to a veteran for whom a guardian had been appointed were held in Bagwell v. McCombs, 31 S.W. 2d 835 (1930) to constitute the corpus of the estate. In the opinion it was stated at page 837:

" . . . While the estate consisted entirely of the monthly allowances made by the United States government to the ward, it was nevertheless the corpus of the estate and not income from an estate. It is also an estate from which there was no income, and any expenditures for the benefit of the ward must be made from the corpus of the estate. Anderson v. Steddum (Tex.Civ.App.) 194 S.W.1132."

In Gilbert v. Hines, 32 S.W. 876 (Civ. App. 1930) a guardian claimed a commission upon moneys paid to the guardian by the United States Veterans' Bureau as monthly disability compensation accruing to the ward over a period of years and upon moneys paid to the guardian by the United States Veterans' Bureau under a policy of war risk insurance. The Court held that the monthly disability payments made by the government were part of the corpus of the ward's estate, citing Bagwell v. McCombs, supra, and Anderson v. Steddum, supra. The Court further held that the moneys paid to the ward under the policy of war risk insurance were part of the corpus of the estate, stating at page 878 of the opinion:

"In the instant case the ward's claim for war risk insurance, subsequently enforced by appellant as guardian, existed as such claim at the time appellant was appointed and qualified as guardian. . . . We think unquestionably, though a chose in action at the time appellant was appointed guardian, the insurance claim was a part of the corpus of the ward's estate. . . . The word 'estate' includes claims that are mere choses in action and are alone sufficient warrant for instituting administration proceedings in a probate court. [Citing authorities]

"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. Anderson v. Steddum (Tex.Civ.App.) 194 S.W. 1132; Bagwell v. McCombs, Guardian (Tex.Civ.App.) 31 S.W. (2d) 835; Freedman v. Vallie (Tex.Civ.App.) 75 S.W. 322."

The case of McCrorry v. Wichita County, 261 S.W.2d 867 (1953, error ref.) held that moneys received by a guardian and constituting the ward's share of periodical distributions from the liquidation of a trust are not "actual cash receipts" within the meaning of Article 3926, Vernon's Texas Civil Statutes, and that the County Judge was, therefore, not entitled to a commission on such sums. The decision relied upon Willis v. Harvey, supra. The following language of the court in the Willis case was quoted with approval at page 289:

". . . 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, . . ."

In the McCrorry case it was further stated at page 869:

"The 'estate first delivered' to appellant was the distribution made to her by the trustee. . . . As guardian, she could not have claimed a

commission on the estate first delivered.

". . .

"But if it could be said that the ward's estate 'first delivered' to appellant consisted of ownership in the properties conveyed by the trustor to the trustee, rather than in the share distributed to her by the trustee, the funds distributed would nevertheless be the corpus of the ward's estate. It would be the same estate in a different form, and would be only once received. Gilbert v. Hines, Director of U. S. Veterans' Bureau, Tex.Civ. App., 32 S.W. 2d 876; 21 Tex. Jur., p. 352, sec. 95."

It was also held in McCrary v. Wichita County, supra, that the provisions of the statutes relating to commissions to be paid to executors, administrators and guardians are indicative of the legislative intent expressed in Article 3926, Vernon's Texas Civil Statutes, relating to commissions to be paid to the County Judge upon actual cash receipts of an estate. Hence, the case of Gilbert v. Hines, supra, while relating to the commission to which a guardian is entitled on an estate of his ward, serves to reflect the interpretation which should be given to the statute allowing County Judges commissions upon the "actual cash receipts" of an estate.

In the present situation the ward's interest in the Workmen's Compensation claim and her interest in the Social Security benefits were in existence at the commencement of the guardianship, both claims having arisen from the death of her father prior to the guardianship.

From the cases cited above, it is abundantly clear that since these claims and the money into which they were converted constitute the estate first received by the guardian, they cannot also be income or "actual cash receipts" from the estate, but must be viewed as the corpus thereof. Accordingly, it is our opinion that these payments from a claim for Workmen's Compensation and a claim for Social Security benefits represent the corpus of the ward's estate. They are, therefore, not subject to the payment of commissions to the County Judge under the provisions of Article 3926, Vernon's Texas Civil Statutes.

Mr. Charles J. Lieck, Jr., page 6 (WW-664)

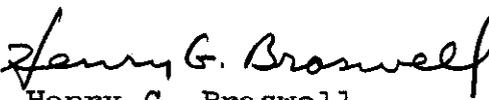
Attorney General's Opinions 0-5495 (1943) and 0-1665 (1939) are hereby overruled to the extent that they are in conflict with this opinion.

S U M M A R Y

A County Judge is not entitled to a commission under Article 3926, Vernon's Texas Civil Statutes, on moneys received by a guardian as benefits to the ward on a claim for Social Security and a claim for Workmen's Compensation, both such claims arising from the death of the ward's father prior to the guardianship, because the claims and moneys derived therefrom are part of the corpus of the ward's estate.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
Henry G. Braswell
Assistant

HGB:mg:zt

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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