

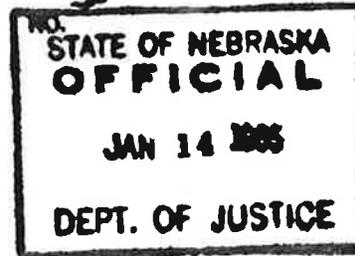
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

January 10, 1985

PAUL L. DOUGLAS
Attorney General
PATRICK T. O'BRIEN
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General



SUBJECT: Probate Fees

REQUESTED BY: Joe C. Steele, Nebraska State
Court Administrator

OPINION BY: A. Eugene Crump, Deputy Attorney General
L. Jay Bartel, Assistant Attorney General

QUESTION: 1. Are estate settlement fees to be imposed on an
estate which commences and closes informally,
where there is a proceeding for determination
of inheritance tax?

CONCLUSION: 1. No, where an estate is opened and closed
informally, the only fee imposed for the
determination of inheritance tax proceeding is
the \$15 fee provided by Neb.Rev.Stat.
§33-126.03 (Reissue 1984).

QUESTION: 2. Are multiple probate filing fees to be
collected if multiple probate proceedings are
held?

CONCLUSION: 2. No, the fees assessed under Neb.Rev.Stat.
§33-125(2) (Reissue 1984) are for all
proceedings relating to the formal settlement
of an estate, and additional fees are not to
be collected.

You have requested us to reconsider our conclusions regarding questions 3 and 4 in Opinion No. 280, dated October 1, 1982.

Initially, you have asked us whether estate settlement fees are to be imposed on an estate which commences and closes

Assistants

Bernard L. Packett
Mel Kammerlohr
Harold I. Mosher
Terry R. Schaefer
Marilyn B. Hutchinson
J. Kirk Brown

Royce N. Harper
Sharon M. Lindgren
Lynne R. Fritz
Ruth Anne E. Gelter
Dale A. Comer
Mertel J. Bundy

Mark D. Starr
Dale D. Brodkey
Linda L. Willard
John B. Boehm
Henry M. Grether III
Calvin D. Hansen

Timothy E. Davis
L. Jay Bartel
Jill Gradwohl
LeRoy Stevens

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informally, where there is a proceeding for determination of inheritance tax.

In 1984, the Legislature passed LB 373, which amended the provisions of Neb.Rev.Stat. §§33-125 and 33-126.03 (Reissue 1984). Section 33-125 was amended to include the following language:

A determination of inheritance tax in an estate proceeding which is otherwise informal shall not render the proceeding formal.

Furthermore, §33-126.03, the provision pertaining to fees in inheritance tax determination proceedings, was amended to include the following:

Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (2) of section 33-125.

These amendments clearly indicate the Legislature's intent to eliminate the charging of a double set of fees in estates where there is an inheritance tax proceeding. Where an estate is opened and closed informally, the only fee imposed is the \$15 fee under §33-126.03; no formal settlement fee is imposed under §33-125. Where formal probate proceedings are held, a separate \$15 fee under §33-126.03 is not imposed when there is a proceeding for inheritance tax determination.

You have also asked us to reconsider whether multiple probate filing fees are to be collected if multiple formal probate proceedings are held. In particular, you direct our attention to formal proceedings to determine inheritance tax.

Subsection (2) of §33-125, which establishes the fees to be imposed for all proceedings relating to the formal settlement of an estate, provides, in part:

Such fees shall be in full for any and all services to be performed by the court in the settlement of an estate wherein no contest arises and no additional fees shall be charged for services performed in connection with petitions, hearing, and orders in the course of such administration.

We believe this language plainly indicates that the fees assessed under §33-125(2) are for all proceedings relating to the formal settlement of an estate, and additional fees are not to be

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collected. Furthermore, with regard to proceedings for inheritance tax determination during formal probate proceedings, §33-126.03 clearly provides the \$15 fee imposed pursuant to that section is not to be charged where formal settlement proceedings subject to §33-125(2) are involved.

Very truly yours,

A. EUGENE CRUMP
Deputy Attorney General



L. Jay Bartel
Assistant Attorney General

LJB/bae

APPROVED:



Deputy Attorney General