

Opinion No. 4923-0A

July 8, 1946

BY: C. C. McCULLOH, Attorney General

TO: C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*246} We wish to acknowledge your letter of July 6, 1946 wherein inquiry was made as to the proper {*247} procedure in regard to an estate where there are no heirs or beneficiaries.

Sections 33-1501 to 33-1506 of the 1941 Compilation set forth the procedure to follow in such cases. Proceedings are provided for wherein the probate judge appoints the Sheriff to take possession and custody of the effects or property of such deceased persons. Letters of administration are not granted unless a creditor of such deceased person appears and files a petition with the probate court requesting that such letters be granted. However, an inventory, orders and other instruments have to be filed with the county clerk in such cases.

Section 33-1503 of the 1941 Compilation provides that the probate judge may approve an order to be paid of just debts owed by the estate or such deceased person, provided that such debts be due from said estate for services, expenses and **costs** accruing and made after the death of the deceased.

Section 16-422 of the 1941 Compilation provides that the probate court clerk shall be paid a fee of \$ 10.00 for docketing each cause and the only exception made is that the New Mexico Department of Public Welfare may file proceedings for the appointment of guardians without the payment of said docket fee. It is my opinion that a filing fee of \$ 10.00 must be paid to the clerk for docketing this cause and it appears to me Section 33-1503 so contemplates, as provision is therein made for the allowance of cost by the probate judge from the proceeds of the estate.

By ROBERT V. WOLLARD,

Asst. Atty. General