COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

JUN 8 1951

B-56200

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Honorable Henry P. Chandler, Director
Administrative Office of the
United States Courts

My dear Mr. Chandler:

Reference is made to letter of this Office dated January 2, 1951, B-56200, wherein you were advised that, pursuant to your request of November 15, 1950, this Office would take no further action toward the settlement of the account of Mr. William P. Rowland, deceased, former clerk of the United States Court of Appeals for the Third Circuit, until a committee appointed to consider the matter could meet with representatives of this Office to discuss the general problem of the administration of library funds of courts of appeals derived from payments of lawyers upon admission to the bar of the respective courts.

As you know, this Office for a number of years has been of the opinion that the fees paid by lawyers upon their admission to the bar of the various courts of appeals represented fees received by the clerks by virtue of their offices and therefore properly should be deposited into the Treasury of the United States. See 11 Comp. Gen. 372. However, the Judicial Conference of the United States consistently has urged that the fees and moneys received by the

Courts of Appeals are fixed and limited by the order of the Supreme Court of the United States entered February 19, 1897, and that such admission fees, not being contained in such order of the Supreme Court, are not fees received by the clerks by virtue of their office and need not be covered into the Treasury. Consequently, and notwithstanding the decision of this Office referred to above, and further correspondence in regard to the matter, such moneys have not been covered into the Treasury and the amounts received by Mr. Rowland representing such fees which were not covered into the Treasury were set up as an accounting difference in the settlement of his account.

The conference requested by you was held on February 13, 1951, at which this Office was represented by Mr. Frank L. Yates, Assistant Comptroller General, and Mr. E. L. Fisher, General Counsel. The views expressed by the Committee as well as those expressed by the representatives of this Office at such conference are set forth in the report of the Committee dated March 12, 1951, addressed to the Chief Justice of the United States and members of the Judicial Conference. Such views are substantially the same as those heretofore contained in the correspondence between your Office and the General Accounting Office and need not be restated here. Additional reasons advanced by the Committee for not covering the fees

in question into the Treasury of the United States are set out in the committee report as follows:

"Whether the moneys received by the clerks of the courts of appeals for the library or special funds are received by them 'by virtue of their offices' or are 'for the use of the United States' depends upon whether there is a law which requires their receipt. Four Supreme Court cases throw light on this question. In United States v. Hill, 120 U.S. 169 (1887), Hill, the clerk of the United States District Court for the District of Massachusetts, was sued by the United States on his official bond, the United States alleging that he had not properly accounted for all moneys coming into his hands as required by law, according to the condition of his bond. The issue was whether the clerk was chargeable with and required to account for moneys received as fees for the naturalization of aliens. The law (R.S. Section 833) required the clerk to make a semi-annual report to the Attorney General '... of all the fees and emoluments of his office, of every name and character ....' After paying the necessary expenses of his office he was required (R.S. Section 844) at the time of making his report to pay into the Treasury '... any surplus of the fees and emoluments of his office ...' The clerk defended on the ground that he was not required by law to collect naturalization fees but that they were collected under rules of the court which he served. The Supreme Court affirmed the lower court which had decided the issue in favor of the defendant. The Supreme Court, 120 U.S. at p. 179, quotes with approval from the opinion of the lower court as follows: '"It is for the services rendered under these rules, and as a special officer of the court, and not as clerk, that these fees have been permitted. They were not duties pertaining to the office of clerk. They could as well have been performed by any other person designated by the court for the purpose; as by the district attorney, or a commissioner of the Circuit Court, or an attorney, or any suitable person not an officer of the court."'

"The language quoted reads as though the Supreme Court was referring to the instant situation. The clerks of the courts of appeals receive and have received the moneys which we are discussing under rules or orders of the courts involved not in their official capacities as clerks but in their designated status as trustees. The services performed by Mr. Rowland or by any other one of the clerks could just as well be performed by any other officer of the court or by any suitable person not an officer of

the court. For example, the services could be performed by a bank or trust company. It is a mere matter of convenience that the clerk or a librarian rather than some other official or person has been designated as trustee to receive the fund.

* * *

"In United States v. MacMillan (1920), 253 U.S. 195, the clerk of the United States District Court for the Northern District of Illinois and his surety were sued for interest on money which he held in his official capacity. The statutes involved were R.S. Sections 833, 839 and 844. The Government relied on two propositions: (1) that the money deposited by the clerk and upon which the interest was allowed was public money of the United States and therefore the interest belonged to the United States, and (2) that without reference to whether the deposits were public funds, the interest paid was an emolument for which the clerk was bound to account. The court decided both issued against the United States on the ground that the clerk was not required by law to collect interest. Citing the Hill case, the Supreme Court stated, 253 U.S. at p. 205, '...it had been previously held that a sum collected by a clerk for a service not pertaining to his office or provided for in the schedule of fees allowed him for official services was not a fee or emolument in the sense of the statute...'"

The Committee report also refers to the holding in the case of Laughlin v. Clephane, 77 F. Supp. 103, in relevant part, as follows:

"To deal now more specifically with the ruling in the Clephane case: In that decision the United States District Court for the District of Columbia upheld its power to require by a rule of court that applicants for admission to the bar make a payment of $125. to the Secretary and Treasurer of the Committee on Admissions and Grievances comprised of members of the bar of the court for character examinations to demonstrate fitness for admission. It was argued that these payments represented money belonging to the United States which should be covered into the Treasury. The court rejected this argument, stating, 77 F. Supp. at p. 106: 'The court, in the exercise of an authorized as well as an inherent power, rightfully accumulated a fund in order that it might make effective the rules that it promulgated. This fund did not belong to the United States but belonged to the court and was administered in a manner outlined by the court.'"

While the decisions discussed above are persuasive to the views urged by the Committee, this Office does not feel that they are

B-56200

conclusive in the instant matter, nor is it believed that the interpretation placed on the applicable statutes by the Judicial Conference of the United States is consistent with the purpose and intention of the Congress. However, admittedly the decisions cited in the Committee report at least create a doubt as to the propriety of requiring the covering of the admission fees considered herein into the Treasury. For that reason, and in view of the number of years during which such practice has been followed and since the matter of the failure of the clerks to deposit such fees in the Treasury was brought to the attention of the Congress for its consideration in a report of this Office dated August 10, 1949, B-45101, you are advised that no further question will be raised here with respect to the disposition of such fees unless and until the Congress should take further action in the matter.

The settlement of Mr. Rowland's account will be revised accordingly.

Sincerely yours,

[illegible]

Comptroller General
of the United States