

**Opinion No. 46-4916**

June 29, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** Fred J. Federici District Attorney Eighth Judicial District Raton, New Mexico

{\*242} We are in receipt of your letter of June 26, 1946 in which you ask two questions concerning the construction of Section 34-117 of the 1941 Compilation. Your two questions are as follows:

"1. What should the County Clerk do with these instruments upon their receipt? Should a regular docket entry be made in the Probate Court Docket and a probate file thereof made?

"2. If a regular docket entry in the Probate Court Docket is to be made, then should the {\*243} Clerk require the payment of the usual \$ 10.00 docket fee and if so, whom should be required to make such payment, in view of the fact that these papers are forwarded to the Clerk through the Succession Tax Division?"

Section 34-117 provides that the Bureau of Revenue may waive the administration of any estate upon a proper showing being made. It then requires the Bureau of Revenue to file a certificate of no tax due or of the payment of the tax in the office of the County Clerk.

As a practical matter, the Bureau of Revenue mails to the County Clerk a copy of application, the waiver of administration and certificate, which are the only instruments delivered to the County Clerk.

This section does not require the docketing of the proceedings as a probate matter. It is, therefore, my opinion that no docket fee should be charged, especially in view of the fact that it is the Bureau of Revenue that files the instruments. As a practical matter, however, the respective County Clerks must keep a record and index of the proceedings. I am informed that most County Clerks index the proceedings in their probate docket and file the instruments in their probate files, so that a later search will quickly disclose the proceedings.

It is my opinion that while it is not necessary for County Clerks to index the waiver of administration proceedings in their probate docket, this is a proper place to do so.

By ROBERT W. WARD,

Asst. Atty. General