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TELEPHONE 3-0303

Riverton, Virginia
January 18, 1934.

BUREAUS OF THE COMMISSION

GEOLOGICAL SURVEY
WATER RESOURCES AND POWER
FOREST SERVICE
PARKS AND LANDSCAPE ENGINEERING
ARCHAEOLOGY AND HISTORY
STATE PUBLICITY

Mr. J. Robert Switzer,
Clerk, Circuit Court of Rockingham County,
Harrisonburg, Virginia.

Dear Mr. Switzer:

Mr. Armstrong has forwarded me your letter of the 16th in which you ask to be advised as to the Commission's attitude in the matter of claims by your good self, as Clerk of the Circuit Court of Rockingham County, for fees or allowances for services rendered claimants of awards paid into the custody of your court, in the Shenandoah National Park condemnation proceedings, either by way of preparation of claims, examination of records as to liens, or the preparation of certificates of copies of orders to the State Treasurer.

Section 25 of the Public Park Condemnation Act expressly provides for the payment of:

"All lawful compensation and allowances to any person employed by or under the direction or the authority of the court or judge for the furtherance of such proceedings which are allowed and approved by the court or the judge thereof, up to and including the entry of the judgment, as in rem, condemning the land, or estate or interest therein, sought to be condemned, may be taxed as a part of the costs of the case and should be paid by the petitioner upon the order or direction of the court or judge thereof."

Section 41 provides that:

"In any case wherein a judgment in rem etc. is entered etc. the court shall etc. enter an appropriate order setting forth such fact, and expressly discharging the petitioner from any further obligation or duty with regard thereto, and declaring that the petitioner shall not thereafter be in any way responsible for the disposition or distribution of the fund so paid into the custody of the court, etc."

The third paragraph of Section 15, which is as follows, is still more explicit:

"In order properly to determine conflicting rights or claims of claimants to the fund, the court shall have power to direct issues to be made between such claimants and to require them or any of them to enter into such bond or security for the costs incident to or arising upon a prosecution of their claims, as shall seem to the court meet and proper; but no cost incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund or the distribution or disbursement thereof after the same has been paid into the custody of the court by the petitioner shall be adjudged against the petitioner, except only, and in the discretion of the court, in any such matter as to which the petitioner shall have exercised his right to intervene under the provisions of section number thirty-nine of this act."

It seems very clear from the above cited provisions of the Act that the Petitioner in these condemnation cases is neither authorized nor obligated to pay any such claims as you outline in your letter, and that such claims for services rendered should be paid by the respective distributees of the condemnation awards.

So far as it is proper for counsel to express an opinion as to the modest claims for fees or compensation mentioned in your letter, we believe that there would be no real ground for complaint on the part of distributees, who may be charged with such fees or compensation, especially when one takes into consideration the liberal attitude assumed by the Petitioner, the Appraisal Commissioners, and the Courts in ascertaining and determining the amounts of these awards.

It has occurred to us, however, that instead of fixing a flat fee or remuneration to the Clerks who really give special time and attention to the handling of the matters mentioned in your letter, a more equitable arrangement would contemplate a fee of say \$1.00 in cases where the awards amount to \$100.00 or less; \$2.00 where the awards exceed \$100.00 and are less than \$250.00; \$3.00 where the awards exceed \$250.00 and are less than \$500.00; and \$5.00 where the awards are in excess of \$500.00.

The power of the court to provide for such payments would seem to be established by the second paragraph of Section 15 of the Act in which it is said that:

"in order to enable or to assist the court in determining a proper disposition or distribution of the fund,

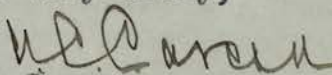
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the court may have inquiries by a commissioner to ascertain what persons are entitled thereto and in what proportions."

Yours very truly,


A. C. Carson

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