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Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-8667

September 17, 1985

Honorable Martha D. Newton  
Anderson County Probate Judge  
P. O. Box 4046  
Anderson, SC 29622

Dear Judge Newton:

You have inquired as to whether a testator in a will can disallow a commission for serving as an executor thereunder. You have further inquired whether the executor can also receive a bequest if he is entitled to a commission.

In response to your first inquiry, I direct your attention to §21-15-1450, South Carolina Code of Laws, 1976, as amended. Section 21-15-1450, as amended by Act 498 of 1984, sets the commission for an executor at 5% of the appraised value of the personal property of the estate. The final sentence of that statute, however, reads as follows:

The provisions of this section do not apply in any case where there is a contract providing for the compensation to be paid for such services or where the will otherwise directs. (emphasis added).

It is generally held that in the absence of an effective testamentary provision relating thereto, the right of a personal representative to compensation arises from and is controlled by statute. Such statutes, being in derogation of the common law, are to be strictly construed; they cannot be construed contrary to their plain and definite language. 34 C.J.S., Executors and Administrators, §853.

In the situation posed by your question, it appears that the testator has provided a specific provision relating to compensation. In light of this provision and the very clear language of §21-15-1450, it is the opinion of this Office that the executor in this particular case is not entitled to compensation. Since the response to your first question is to the effect that the executor

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is not allowed a commission, there is no possible conflict with his accepting a bequest and, therefore, he may receive the same.

Sincerely,



B. J. Willoughby  
Assistant Attorney General

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REVIEWED AND APPROVED:



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ROBERT D. COOK  
Executive Assistant for Opinions