

BONDS
STATE TREASURER:—Executor of deceased owner of registered bonds
entitled to receive accruing interest thereon
without having bonds formally registered in
executor's name.

February 14, 1934.

Hon. Richard R. Nacy,
State Treasurer of Missouri,
Jefferson City, Missouri.

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Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am writing to request a written opinion on the following matter:

A party living in Washington, D. C., is the owner of \$15,000.00 State of Missouri Road Bonds, said bonds being fully registered in his name. Recently this Department received a letter from a Washington bank stating that the holder of these bonds has died, and that the bank and wife of deceased have been appointed co-executors of the estate. A certified copy of Record of Probate is enclosed with the bank's letter. The bank requests that future drafts in payment of semi-annual interest be made payable to the executors of the estate rather than the person in whose name the bonds are registered. We have requested that bonds be transferred, but in reply to our request they state that they do not wish the bonds to be transferred at this time.

The bank takes the position that upon the death of the owner of these bonds, the bonds automatically become a part of his estate and that a formal transfer is not necessary. The position of this Department is that under the law we cannot make interest payments to other than the actual recorded holder of said registered bonds without making a formal transfer. Since questions of this sort arise frequently we are requesting a written opinion from your office as to whether or not under the laws of the State of Missouri we can comply with this request.

For your information, we are enclosing our file of all correspondence in this particular case. We shall be grateful if you will return it with your opinion."

We believe that the title to the \$15,000.00 of registered bonds owned by Woodbury Blair and registered in his name upon his death passed immediately to his executors under the will. We do not believe that it is necessary, in order for the title to pass, that a formal change in the registration of these bonds be made. The general rule regarding the passing of title of personal property upon the death of the owner is stated as follows in 24 C. J. page 304, where it is said:

"It is usually considered that the title of the executor, being derived from the will, vests at the moment of decedent's death, while the title of an administrator, being based upon the ground of administration, vests when his letters are granted.

The right to the possession and use of the personal estate of a decedent, whether testate or intestate, vests at once in the personal representative, to the exclusion of the widow, next of kin, legatees, or creditors, and continues until distribution is ordered or the debts and legacies are settled."

In In Re Estate of Messersmith, 264 No. 610, 618, the Supreme Court says:

"If, however, a leasehold is personal property, it passes primarily, on the death of the owner, to the executor or administrator, and until the heirs or legatees receive it through the process of administration, the legal title thereto is in such legal representative."

In Richardson v. Cole, 160 No. 372, 376, the Court says:

"It may be conceded at the outset that the legal title to personal property of a deceased person is in the administrator who holds it in trust for heirs and legatees, and that he alone can sue for and recover the assets of such deceased person. ***** But these decisions go no farther than has already been conceded, that is, that the administrator is, under ordinary circumstances, entitled to the possession of the

personal property of the deceased, and that his right to sue for such possession is exclusive of all others."

Under the law the title to personal property vests in the executor at the death of the deceased, and in the administrator upon the issuance of letters. The title passes from the deceased person to a personal representative by operation of law and is not made dependent upon the compliance with any technical transfer by any other person. Immediately upon the death of a person the administrator or executor is entitled to the immediate possession. Applying these principles to the inquiry at hand, we believe that upon the death of Mr. Blair that the bonds registered in his name in this State passed immediately to his executors. They are the owners of the bonds and as such would be entitled to the interest accruing thereon. We do not believe that you can compel them to have the bonds registered in their names as a condition precedent to the paying of the interest to the executors. No doubt these executors are postponing the change in the registration of these bonds on the theory that the bonds may be distributed in kind and the transfer might be made upon distribution to some person under the will.

If the State does not pay this interest due on these bonds to the executors, then apparently the interest cannot be collected by anyone, because the formal owner of the bonds is now deceased. We do not believe that the law requires that these bonds be registered in the names of these executors before they are entitled to receive the interest thereon. On the contrary, as we understand the law, they are the only persons who are entitled to receive the interest and the only persons who can give a valid receipt which would be binding upon the former owner, or any person claiming under him. If you are satisfied of the regularity of the appointment of the executors demanding the interest, then we believe that you may direct that the interest be paid to them, and that you will be fully protected in so doing. On the other hand, if a draft be made payable to the designated person and an indorsement of his name by these executors substantiated by their authority as such, this would be complete protection in the payment of the draft.

It is therefore the opinion of this Department that the title to registered bonds and interest due thereon immediately vests in the executors under the will, upon the death of the testator, and that from that time on they are entitled to the interest and possession of said bonds, and that it is not necessary that said bonds be formally registered in their names before they may demand the interest accruing.

Hon. Richard K. Macy,

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February 14, 1934.

We are of the further opinion that a payment of the interest due on these bonds to the properly qualified executors would protect the State Treasurer in this transaction. You, of course, must be satisfied that the persons making this demand upon you are legally entitled to receive the payment.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S