

**ESCHEAT** - Construction of the Statutes (R. S. Mo. 1929, Sec. 625) relating to proceedings on behalf of the state for escheated lands:

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August 3, 1934.



Mr. Leslie D. Rice,  
Prosecuting Attorney,  
Newton County,  
Neosho, Missouri.

Dear Sir:

Request for an opinion has been received from you under date of July 13th, 1934, such request being in the following terms:

"There is an estate in the Probate Court of Newton County in which the final settlement has just been made, and the real estate will undoubtedly escheat to the state, as there have been no heirs found or will be found.

"I would like your construction of Section 625 R. S. Missouri 1929. There are several pieces of real estate here in Neosho belonging to the deceased, on which there are city and county taxes, as well as paving taxes, and if the state is going to have to wait five years from the date of the death of the deceased before we can proceed to sell the real estate, the other liens may come in ahead.

"I was wondering what construction, if any, had been put on this section by your department. Please advise me, and oblige."

R. S. Mo. 1929, Section 625 provides as follows:

"When the prosecuting attorney shall be informed, or have reason to believe, that any real estate within his county has escheated to the state, and such estate shall not have been sold according to law, within five years after the death of the person last seized, for the payment of the debts of the deceased, he shall file an information in behalf of the state in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the tenants and persons claiming same, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated and alleging that, by reason thereof, the state of Missouri hath right to such estate."

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This statute and the subsequent sections of chapter 3 deal with the procedure by which the state secures land subject to escheat. As we understand your letter, the question about which you are most concerned is when you can bring proceedings under the statutes to secure land for the state, and especially if it is necessary to wait five years.

I.

TITLE TO ESCHEATED LAND VESTS IMMEDIATELY IN STATE

R. S. Mo. 1929, Section 620 provides that one situation giving rise to an escheat is "If any person die intestate, seized of any real or personal property, leaving no heirs or representatives capable of inheriting the same", and this is the type of escheat about which you have inquired.

When the person who formerly held this land died, assuming there to be no heirs, there could not be a period in which the title was in no one. The title could not pass to the executor or administrator under the facts presented by you, because an executor or administrator has no right to the real estate of his decedent unless it is necessary to pay debts or unless the court has ordered him to take control of it. Thus in the case of *McQuitty vs. Wilhite*, 218 Mo. 586, 117 S. W. 730, (1909) the Court said:

"Administrators, the personal representatives of the deceased, have no interest in the lands. They take no title to the lands. Under an order of the probate court, Revised Statutes 1899, section 130, they can under certain conditions rent the lands, and by section 131, Revised Statutes 1899, by order of court repairs to fences and buildings may be made by the ordinary administrator. By Section 145, Revised Statutes 1899, such administrator may on order of the probate court sell lands to pay debts. These sections cover all the rights an administrator has in the real estate, and none of them rise to the dignity of title in real estate. They are all mere rights contingent upon the order of the probate court." (218 Mo. 591) See also *Chambers vs. Wright*, 40 Mo. 482 (1867)

Since the decedent has lost the capacity to hold the land by his death and since his personal representative has no title to or control

over it, and there being by hypothesis no heirs, the title to the land must instantly at the death of the decedent vest in the state without the necessity of any act being done so to vest it, because the theory of land tenure avows no gap of seizin as was pointed out by the court in *Farrar vs. Dean*, 24 Mo. 16 (1856), where the court said in holding that land held by an alien passed instantly on his death to the state by way of escheat:

"At his death, he being a foreigner, his lot would instantly and of necessity, (as the freehold can not be kept in abeyance,) without any inquest of office, escheat and vest in the state, because he is incompetent to transmit by hereditary descent. (2 Kent's Com. 54) Chancellor Kent says: 'Though an alien may purchase land, or take it by devise, yet he is exposed to the danger of being divested of the fee, and of having his lands forfeited to the state, upon an inquest of office found; and if he does, before any such proceeding be had, we have seen that the inheritance can not descend, but escheats of course.' (2 Kent's Com. 61)."

This conclusion is borne out by the language of R. S. Mo. 1929, Sec. 625 above quoted, (which, incidentally, was enacted in 1825 and is found in the revised statutes of 1825 at page 356), in authorizing the proceedings under such statute when land "has escheated", thus showing that the legislators contemplated that the land would already have escheated and title vested in the state when the proceedings under Section 625 and the following statutes were instituted.

## II.

### NECESSITY OF PROCEEDINGS TO TAKE CHARGE OF ESCHATED LAND.

At common law where a person seized of real estate died without leaving any heirs the right of the state to such did not depend upon any action or proceedings to secure control thereof, but was automatic. The rule is stated in *Werner, American Law of Administration*, 3rd Ed. Sec. 132, at page 461 as follows:

"whenever the owner dies intestate; without leaving any inheritable blood, or if the relations whom he leaves are aliens, there is a failure of competent heirs, and the lands vest immediately in the State by operation of law. No inquest of office is requisite in such cases."

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\*4 Kent, \*424; Farrar v. Dean, 24 Mo. 16; People v. Conklin, 2 Hill ( N. Y.), 67, 74; Pom. Man. L. 567.

However, the Missouri Statutes have altered the common law rule and the proceeding and judgment under such statutes is necessary for the state to secure full rights over the property, the title to which escheated upon the death of the person last seized.

### III.

#### TIME WHEN PROCEEDINGS ON BEHALF OF STATE MAY BE INSTITUTED.

As has been demonstrated above, the title to land held by one dying without heirs vests in the state at the instant of his death, and the only interest which his personal representatives might assert would be to use such land or the proceeds thereof in the payment of the debts of the decedent.

The decedent about whose lands you have inquired, we assume left no debts or left sufficient personal property to pay such debts and in any event we assume that since the final settlement has been made the time for exhibiting such debts under R. S. Mo. 1929, Sec. 183, has elapsed. This would remove from consideration the necessity of construing that part of Section 625 which provides "and such estate shall not have been sold according to law within five years after the death of the person last seized, for the payment of the debts of the deceased," because this provision could not be operative in a case where there was no further possibility of the sale of this realty for debts. The meaning of such provision is not free from doubt, but we shall reserve a ruling on it until such time as a case is presented in which such ruling is necessary.

### IV.

#### STATUS OF TAX LIENS AGAINST REAL ESTATE.

A. When it was stated above that there were no personal debts

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for which this real estate might be sold we were not unmindful of the taxes and tax bills against this property to which your letter refers. However, such tax obligations were no personal obligations of the deceased but were only rights against the land itself.

State ex rel Hayes vs. Snyder, 139 Mo. 549, 41 S. W. 216 (1897); State ex rel Beckwith vs. Finn, 100 Mo. 429, 13 S.W. 712; O'Day vs. McDaniel, 181 Mo. 529, 80 S. W. 895 (1904); Neenan vs. City of St. Louis 126 Mo. 89 (1894); Stewart et al vs. Allison, 150 Mo. 343, 51 S. W. 712 (1899).

B. R. S. Mo. 1929, Sec. 182 - III. contains the following proviso:

"Provided, that no executor or administrator shall pay any taxes on the real estate of the deceased that are not a charge against the same at the death of the deceased, except where he is in possession of the realty under an order of the court."

By inference it would seem that if there were sufficient personal property in the estate after the payment of all debts provable against the estate, the administrator or executor could pay taxes which were a charge on the real estate at the time of the death of the deceased. As to taxes not a charge on the real estate at the time of the death of the decedent, it would seem that such taxes could not be properly assessed, for the liability of the property itself to taxation would cease upon the death of the decedent, because at that time the title vested in the state and the constitution of Missouri, Article X, Section 6 provides that:

"the property, real and personal, of the State, \* \* \* shall be exempt from taxation."

Consequently the only taxes which could be a charge on this land and to which a sale would be subject would be taxes which were a charge at the time of the death of the decedent.

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CONCLUSION.

In conclusion, it is our opinion that where a person dies seized of land in this state and leaving no heirs that title to such lands vests in the state instantly on the death of the decedent and that proceedings under R. S. Mo. 1929, Section 625, on behalf of the state to take charge of such land can be instituted immediately upon the establishment of the fact that there are no debts to which such land would be subject or that the time for exhibiting proof of such debts has elapsed, and it is our further opinion that the only taxes to which such land would be subject would be taxes which were a charge against such land at the time of the death of the decedent.

Yours very truly,

EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL

APPROVED:

                                  
ATTORNEY GENERAL

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