

OLD AGE PENSION - Accrued assistance due an old age pensioner at the time of his death, to whom paid.

April 21, 1936. 4-27



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office, which reads as follows:

"I would be glad if you would give me an opinion on the following questions:

'If a person receiving Old Age Assistance dies and there is no administration upon his estate within sixty days after his death, to whom will the accrued assistance be paid?

'What person or persons will determine who is to receive this accrued assistance?' "

In an opinion given to Miss Reba Choate, Assistant Commissioner of Old Age Assistance under date of February 4, 1936, we ruled that accrued assistance due a pensioner at the time of his death was a part of his estate and should be administered upon in the same manner as any other property of the deceased.

Chapter I, R. S. Mo. 1929 provides a complete and exclusive scheme for the administration of estates of deceased persons. In our opinion, the law contemplates that all estates of deceased persons be administered upon under the provisions of this chapter and under the direction and supervision of the Probate Court.

Section 10, p. 998 of 23 C. J. provides in part as follows:

"As a general rule all estates of decedents are subject to administration, as the policy and intent of the statutes on the subject clearly contemplate that property of decedents left undisposed of at death shall, for the purpose of collecting the same, ascertaining and protecting the rights of creditors and heirs, and properly transmitting the title of record, be subjected to the process of administration in the probate court, and indeed there is no other method provided by statute whereby the existence of creditors or heirs of decedent may be conclusively established and the estate distributed."

Section 11, p. 999 of the same volume reads in part as follows:

"Administration is usually a necessity where a person dies leaving unpaid debts and property which may be made available to pay them, and the mere fact that there may be debts has been considered sufficient to render administration proper.* * "

Section 13, p. 1000 of the same volume reads as follows:

"While the power to grant administration is not restricted to cases in which the estate is indebted, the absence of debts may render administration unnecessary, it being considered that in such case the heirs may properly take possession of the assets and make a division among themselves in kind or otherwise by mutual agreement."

The rule that the heirs of a decedent may distribute among themselves his personal property without the appointment of an administrator, which is an exception to the rule that title to personalty left by an intestate rests in his administrator, is applicable only when three things occur: First, the absence of debts against the estate; Second, the legal age of the heirs entitled to share in the distribution; and Third, a unanimity among them as expressed by their agreement or act to dispense with an administrator. *Griesel vs. Jones*, 123 Mo. App. 45.

Section 7, R. S. Mo. 1929 provides what persons are entitled to priority in administering an estate. Said section reads as follows:

"Letters of administration shall be granted: First, to the husband or wife; secondly, to those who are entitled to distribution of the estate, or one or more of them, as the court or judge or clerk in vacation shall believe will best manage and preserve the estate: Provided, however, if the court, or judge in vacation, should believe no one of such persons entitled to administer is a competent and suitable person, some other person than those above mentioned may be appointed."

Section 8, R. S. Mo. 1929 provides that if such persons entitled to priority in administering an estate fail to apply within thirty days, that the court or judge or clerk may issue citation to him or them upon motion of any interested person to appear and qualify for administration, and if the person or persons so cited fail to administer within the time appointed, letters may be granted to any person whom the court or judge or clerk in vacation may deem most suitable. Said section reads as follows:

"If no such person apply for letters within thirty days after the death of the deceased,

the court or judge or clerk may issue citation to him or them, on motion of any person interested, to appear and qualify for administration, giving at least five days' time for that purpose; and if the person or persons so cited fail to administer within the time appointed, letters may be granted to any person whom the court or judge or clerk in vacation may deem most suitable.

Under the provisions of Section 107, Laws Mo. 1933, p. 164, the widow or widower is entitled, in addition to dower, to certain articles of property and such sums of money in exclusion of all debts claimed, charges, legacies and bequests as the court may deem reasonable for the proper support of said widow or widower and minor children under the age of eighteen years, if any, for the period of one year after the death of the decedent. In addition thereto, the widow or widower is allowed personal property not to exceed the appraised value of four hundred dollars under the provisions of Section 108, R. S. Mo. 1929, and under the provisions of Section 110 if the widow or widower does not receive the property thus allowed, the court shall order the money to be paid to the widow or widower.

Under the provisions of Section 2, R. S. Mo. 1929 the Probate Court may refuse to grant letters of administration on estates of deceased persons not greater in amount than is allowed by law as the absolute property of the widow, widower or minor children under the age of eighteen years, and if he orders that no letters of administration shall be issued on such estate, such widow, widower or minor children are authorized to collect, sue for and retain all the property belonging to such estate. Section 2 provides as follows:

"The probate court, or the judge thereof in vacation, in its or his discretion, may refuse to grant letters of administration on estates of deceased persons not greater in amount than is allowed by law as the absolute property of the widower,

widow or minor children under the age of eighteen years. Proof may be allowed by or on behalf of such widower, widow or minor children before the probate court or judge thereof of the value and nature of such estate, and if such court or judge shall be satisfied that no estate will be left after allowing to the widower, widow or minor children their absolute property, he or it shall order that no letters of administration shall be issued on such estate, unless, on the application of creditors or other parties interested, the existence of other or further property be shown. And after the making of such order, and until such time as the same may be revoked, such widower, widow or minor children shall be authorized to collect, sue for and retain all the property belonging to such estate; if a widower or widow, in the same manner and with the same effect as if he or she had been appointed and qualified as executor or executrix of such estate; if minor children under the age of eighteen years, in the same manner and with the same effect as now provided by law for proceedings in court by infants in bringing suits."

Section 296, R. S. Mo. 1929 provides for the election of a public administrator who is ex-officio public guardian and curator in and for his county.

Section 299, R. S. Mo. 1929 provides when a public administrator is to take charge of an estate. Section 299 reads as follows:

"It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and

estate of all insane persons in his county, in the following cases: First, when a stranger dies intestate in the county without relations, or dies leaving a will, and the executor named is absent, or fails to qualify; second, when persons die intestate without any known heirs; third, when persons unknown die or are found dead in the county; fourth, when money, property, papers or other estate are left in a situation exposed to loss or damage, and no other person administers on the same; fifth, when any estate of any person who dies intestate therein, or elsewhere, is left in the county liable to be injured, wasted or lost, when said intestate does not leave a known husband, widow or heirs in this state; sixth, the persons of all minors under the age of fourteen years; whose parents are dead, and who have no legal guardian; seventh, the estates of all minors whose parents are dead, or, if living, refuse or neglect to qualify as curator, or, having qualified, have been removed, or are, from any cause, incompetent to act as such curator, and who have no one authorized by law to take care of and manage their estate; eighth, the estates or person and estate of all insane persons in his county who have no legal guardian, and no one competent to take charge of such estate, or to act as such guardian, can be found, or is known to the court having jurisdiction, who will qualify; ninth, where from any other good cause, said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost."

Section 303, R. S. Mo. 1929 makes it the duty of all civil officers to inform public administrators of all property and estates known to them which are liable to waste, loss or injury, which by law ought to be in the possession of a public administrator. Said section reads as follows:

"It shall be the duty of all civil officers to inform the public administrator of all property and estate known to them which is liable to loss, waste or injury, and which by law ought to be in the possession of the public administrator."

Section 24 of the Old Age Assistance Act provides in part as follows:

" * and in case any applicant shall die, having any accrued or unpaid assistance, the amount thereof shall be paid to the legal representative of such applicant; but if there be no administration upon the estate of the deceased applicant within a period of 60 days after his death, then the amount due shall be paid to whomsoever would be entitled thereto under the laws of this State and the provisions of this Act; * * "

As pointed out above, however, an estate of a deceased does not vest in his heirs or in his creditors, but in an administrator appointed by the court, unless the court orders that no letters of administration be granted when the estate of the deceased is not greater than the amount of the absolute property allowed a widow or widower, in which case the property would vest in such widow or widower.

CONCLUSION.

In view of all of the above, it is the opinion of this department that accrued assistance due an old age pensioner at the time of his death should be paid to the person to whom the Probate Court has granted letters of administration, or to the Public Administrator, when it is his duty to administer the estate, or, if the value of

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the estate is not more than is allowed the widow, widower or minor children as their absolute property, and the court make an order that no letters of administration shall be issued, then the accrued assistance should be paid to such widow, widower or minor children. The only exception to the above is where there are no debts against the estate and the heirs entitled to share in the distribution are all of age and agree among themselves to dispense with an administration, in which case the accrued assistance should be paid direct to the heirs.

We respectfully suggest that in case an old age pensioner die having accrued assistance due him, that the Probate Court of such county wherein the pensioner resided be notified, so that if the persons entitled to administer the estate do not appear within thirty days, he may cite them to appear and qualify for administration, and if they do not do so, appoint some other competent person to administer the estate. We also suggest that the Public Administrator of the county in which the deceased resided at the time of his death, should be notified, so if it is his duty under the law to administer upon the estate, he may proceed to do so.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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