RE: INHERITANCE TAX: Consideration affecting transfer in contemplation of death.

April 30, 1937.

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Honorable Robert F. Sevier,
Judge of the Probate Court of Clay County,
Liberty, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion of April 19th, relative to the following:

"Under Sec. 570 R. S. 1929, referring specifically to that part of the section reading as follows:

'or in the nature of a final disposition or distribution thereof without an adequate, valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section.'

Now with regard to those above lines, this situation is presented. A certain party dies leaving a will in which all of his property was conveyed to an entire stranger; however, the executors of the estate upon investigation find and so return in the inventory that this man had conveyed all of his property within two years prior to his death to this entire stranger. It was alleged by this stranger that he had kept the testator for eighteen years and that his fee for those services was the adequate valuable consideration for this transfer so that same should not now be subject to any tax, seeking thereby to exempt this amount under the section above referred to.

The case seems a little peculiar to me in that it attempts a double standard; in other words, the testator has nothing because he has previously conveyed all of his property and at the same time, the beneficiary, who is this stranger, states that the reason he had no property at the time of his death was because owing him, he had paid his debt by transferring all of this property to the amount of which is approximately $7,000.00.

I was wondering whether or not you had ever had

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an incident of this kind before and further that if this court should find that actually the stranger had performed certain services which were reasonably of the value of $7,000.00 and that therefor he was paid and that because he was paid, the mere fact that the man had died within two years after this payment would not make the estate subject to any tax.

I would appreciate a reply on this as speedily as is possible as, of course, the executors of the will and this stranger are anxious that same be disposed of."

There is no question but that under Section 570, R. S. Mo. 1929 as amended by the Laws of 1931, page 130, a gift, or rather a transfer of property within two years of death for an adequate and valuable consideration is not taxable under the inheritance tax law of the State of Missouri. It is rather difficult to point to a case decisive of the problem submitted by you for the reason that the whole question turns upon the proposition of fact, that is to say, whether the consideration was adequate and valuable. We specifically call your attention to the fact that the consideration must be not only valuable, but adequate.

As to what constitutes consideration, as we have said, is a question of fact for the Probate Court, in the first instance, to determine. A moral obligation to the transferee is certainly not sufficient to relieve a transfer made in contemplation of death from this tax. People v. Porter, 287 Ill. 401. Not every consideration presents a transfer, some being voluntary or some being a gift. The rule has been stated that it is intended that "Property shall be treated as taken under a gift, although such gift may have been made under a contract by which the donee takes a benefit. The fact that something was given in exchange for the donee does not prevent the transaction from being a gift, if one can see from the nature of it that it was intended as a gift." Attorney General v. Johnson, 1 K. B. 617.

In conclusion, we reiterate that the problem is one of fact rather than one of law. There are, however, three rules that may be looked to for guidance, namely, (1) The consideration must be valuable; (2) The consideration must be adequate; and (3) The contract (implied in this case) must be legally enforcible.

JWH:EC

Respectfully submitted,

APPROVED:

JOHN W. HOFFMAN, JR., Assistant Attorney General.

(Acting) ATTORNEY GENERAL