

PROBATE COURT : Court cannot oust the administrator who has
PUBLIC ADMINISTRATOR: taken charge of an estate under Sec. 299 (5)
by appointment under the terms of proviso
in Sec. 7.

March 5, 1939

Hon. Paul S. Limerick
Public Administrator
St. Louis County
Clayton, Missouri



Dear Sir:

This will acknowledge receipt of your letter of February 27, 1939 in which you present this question. Does the probate court have authority under Section 7, R. S. Mo. 1929 to appoint an administrator (not a person entitled to the priority) when the estate is one falling within the subdivision five of Section 299 R. S. Mo. 1929?

Section 7 R. S. Mo. 1929 provides:

"Letters of administration shall be granted: First, to the husband or wife; secondly, to those who are entitled to distribution of the estate (Sec. 306 R. S. 1929), or one or more of them, as the court * * * * shall believe will best manage and preserve the estate: Provided, however, if the court * * * 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."

The pertinent part of Section 299 R. S. Mo. 1929 is as follows:

"It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons * * * * * in his county * * 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; * * *."

Literally this section authorizes the public administrator to administer estates of persons who die intestate in the county, or elsewhere, (leaving no known husband, widow or heirs in this state) when the estate is left in his county and is liable to be injured, wasted or lost. In other words before the public administrator is to act (1) the person must die intestate, (2) leave no known husband, widow or heirs in this state, (3) the estate must be left in his county and, (4) liable to be injured, wasted or lost.

In *Leeper v Taylor* 111 Mo. l.c. 322 it is stated:

"Section 299, Revised Statutes 1889 (now 299 R. S. 1929), makes it the duty of the public administrator to take charge of the estates of deceased persons in the cases specified in the first seven subdivisions thereof. In those cases the public administrator, in taking charge of estates, acts independent of any order of the probate court."

He, of course, must give the notice required by Section 302 R. S. Mo. 1929.

In re Estate of Hill 102 Mo. App. l.c. 621, it is said of the public administrator under Section 299, supra:

"No appointment by the probate court was required, * * where the public administrator, of his own motion, has taken charge of the estate of a deceased under any of the specifications now contained in the above section, and has given notice under section 295 (now 302)."

In re Estate of Brinckwirth 266 Mo. l.c. 477 the court announced this rule, as stated by counsel:

"The Public Administrator has authority to take charge of an estate under the Missouri Statutes, and he continues in charge until

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superseded by one having a superior right to administer."

With the law, as above set out in mind, it is clear that if the public administrator does that which the statute makes it his duty to do, there can be no dispute with the probate court about who is to administer estates which fall under part five of section 299, because said administrator can enter upon the administration without any order from the probate court. Once he takes charge of an estate he continues in charge until superseded by one having a superior right to administer as set out in section 7, supra, or removed "for good cause shown" under Section 305 R. S. Mo. 1929.

The effect of the proviso in Section 7 is to give the probate court authority to refuse letters to those persons named in said section having prior rights to administer, when he deems them unsuitable or incompetent. This right of the court is dependent upon there being such a person in the state who is unfit. When there is such a person in the state, even though unfit, the public administrator has no statutory right to administer under section 299 part 5. By the same line of reason when there is not a person having superior right to letters of administration under section 7, in the state, then there is no one for the court to find unsuitable so that the proviso can operate to give the court authority to appoint another person. In such cases the public administrator should on his own motion take charge.

CONCLUSION

Therefore it is our opinion that the probate court cannot divest the public administrator of his right to administer an estate which falls under section 299 (5) R. S. 1929, after he takes charge of said estate, except when a person with superior right to administer appears or by removal for good cause under Section 305 R. S. Mo. 1929.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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