

ADMINISTRATION:  
PROBATE COURTS:

Personal estate of non-resident decedent may be administered by the Probate Court in which the estate is settled.  
Probate Courts not required to turn over to domiciliary administrator the personal estate of a non-resident decedent, after the payment of all debts, if, under the circumstances, such distribution may be best accomplished by administration in this state.

June 3, 1942

this state.

Honorable William H. Bruder  
Probate Judge, Jasper County  
Carthage, Missouri

Dear Judge Bruder:

This is to acknowledge your letter of recent date requesting an opinion from this department, relative to estates of non-resident decedents. Your request reads as follows:

"I would like an opinion on the following propositions which have come up in my Court.

First: whether or not it is mandatory for an ancillary administrator to return all funds after the payment of Missouri creditors, administration expenses, and inheritance tax to the domiciliary administrator of another state for distribution to the heirs and legatees even though some are residents of this state. Or, whether the funds may be distributed direct from this Court.

Second: If the funds may be distributed from this Court, whether or not funds of the estate in the hands of the Administrator of the domiciliary administration may be taken into account and Missouri beneficiaries paid on the basis of the funds in this state plus funds in the hands of the domiciliary administrator.

Third: Is it mandatory that funds always be returned to the Court having domiciliary jurisdiction in another state after payment of creditors and Missouri expenses.

"Your opinion on the above propositions would be greatly appreciated at your earliest convenience."



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The answer to your inquiries depends upon a consideration of Sections 253 and 254 of R. S. Mo., 1939. In this respect, it is assumed from your questions that there is only personal property involved. Hence, our opinion will be based upon that premise.

Section 253 of R. S. Mo., 1939 reads as follows:

"When administration shall be taken in this state on the estate of any person, who at the time of his decease was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed according to the laws of this state, and his personal estate according to his last will, if he left any, duly executed according to the laws of his domicile; and if there should be no such will, his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant."

Section 254 of R. S. Mo., 1939 reads as follows:

"Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate, if any, may be distributed and disposed of in the manner aforesaid, by the court in which the estate is settled; or it may be transmitted to the executor or administrator, if there be any in the state or country where the deceased had his domicile, as the court, under the circumstances, shall think best."

It is apparent to us from a consideration of these statutes, that the personal property of a non-resident who has left no will shall be administered in accordance with the laws of the state of which the non-resident was an inhabitant. In the event of a will of a non-resident, duly executed under the laws of the state of which he was an inhabitant, the personal property shall be distributed in accordance with the will. This, of course, follows after the payment of all debts for which the property may be chargeable in this state.

Distribution of personal estate of a non-resident may be administered by the court in which the estate is settled or transmitted to the foreign executor or administrator, if any there be. It should be observed in this respect, however, that the statute invests in the court a discretion. Hence, if the court believes, under the circumstances involved in the particular case, that administration of the personal estate of a non-resident may be best administered in this state, the court may exercise its discretion. This is a matter entirely for the decision of the court.

Our views in the above respects are fortified by a consideration of cases which have considered these statutes. In this respect your attention is directed to the very early case of Naylor's Administrator v. Moffatt, 29 Mo. 126. In that case the court said at page 128:

" \* \* \* If the plaintiff is an administrator regularly appointed, as the demurrer admits, then his right to all the personal property of the deceased found here is unquestionable; and of course his right to sue is exclusive of the foreign executor, distributees, and of all others whomsoever. The grant of administration to plaintiff vests in him the legal title to the property; and he is to all intents and purposes the legal owner, although he is so in the character of trustee. The letters of the foreign executor have no extra territorial force, and give him no title to property of the testator in this state; and he could not bring or maintain an action in his official capacity in this state to recover it. His title does not extend beyond the limits of the state of the testator's domicile, and the movable property therein. (Sto. Conf. of Laws, Section 512.) Whatever right he as executor may acquire to the property in question is by virtue of our own law. So that as a question of law arising upon the facts averred in the petition, there can be no doubt of the plaintiff's right of action to recover the property in question, irrespective of the state of the primary examination in Virginia, whether it is closed or not. The administration

here is ancillary to that in the state of Virginia, and the rights of heirs and legatees are as effectually secured under it as under the primary administration there. If there are no debts, the property will be disposed of according to the will of the testator, or it may be transmitted to the executor in Virginia."

Attention is also directed to the case of McPherson's Administrator v. McPherson, 70 Mo. App. 330. In that case, the court, in speaking of the statute here under consideration, said at page 336:

" \* \* \* The statutes in question were made for the purpose of authorizing administration upon the property and effects of nonresidents which at the time of their decease were found in this state. These statutes do not relate to property and effects not within the jurisdiction of our courts. They also contemplate that the administration had here shall be ancillary to one had at the domicile of the nonresident. Hence they provide for the transmission to the primary administration of the residue of the personal estate left after the winding up of the auxiliary administration conducted in Missouri." (Under-scoring ours.)

Your attention is particularly directed to the underlined portion of the quotation of the court in the above styled case, with respect to property or effects not within the jurisdiction of the courts of this state.

#### CONCLUSION.

In view of the above, it is the opinion of this department that it isn't mandatory for an ancillary administrator to pay over to a domiciliary administrator the proceeds of the personal estate of a non-resident decedent, unless required so to do by the Probate Court.

June 3, 1942

(1) Probate Courts are without authority or control over the personal property or effects not within the jurisdiction of this state. In other words, if an ancillary administrator has a thousand dollars (\$1,000.00) in his hands to be distributed and the domiciliary administrator has one thousand dollars (\$1,000.00) in his hands to be distributed, in making such distribution, under the laws of this state, the Probate Court, shall not consider the amount which the domiciliary administrator has under his possession and control, as that property passes by force and effect of the laws of the estate of the non-resident decedent of which he is an inhabitant.

(2) If in the opinion of the Probate Court, it is believed best that the personal estate of a non-resident decedent be distributed in this state to persons lawfully entitled thereto, such may be done. In other words, it is not mandatory that the personal estate of a non-resident decedent, after the payment of all debts for which the personal estate may be liable to turn over to the domiciliary administrator the personal estate of such non-resident decedent.

Respectfully submitted

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APPROVED:

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