

ADMINISTRATION: PUBLIC ADMINISTRATORS: Public Administrators must turn over all money, property and papers belonging to all estates in which final settlement cannot be made during first regular term of probate court after the expiration of one year after successor takes office.

February 25, 1942

2/22  
Hon. Robert F. Sevier  
Judge of the Probate Court  
Liberty, Missouri

3-73

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Dear Judge Sevier:

We are in receipt of your opinion request of February 11, which request reads as follows:

"This letter forwarded you direct rather than sending the same to the Prosecuting Attorney and in return asking him to forward it to you.

"Two questions have arisen in respect to Section 301 of the Revised Statutes of Missouri, 1939, as amended, found at Page 286 of the Laws of Missouri, 1941. Those two questions are as follows:

"1. Is this section, as enacted, void as respects an administrator whose term expired December 31, 1940, as being, as far as he is concerned, an ex post facto law and, therefore, not affecting him as having to meet the requirements of this section?

"2. Does the wording of that section indicate that the public administrator is to perform, as there indicated, upon only those estates of which he is administrator, or does this section affect him in all the capacities under which he may be acting as public administrator? In other words, he has some estates in which he is guardian and curator of minors and incompetent persons. Under this section would he be ordered to act in those estates in which he was guardian of minors or incompetents as well as

well as those of which he is administrator of a deceased person's estate?

"I shall appreciate a reply upon this as quickly as possible."

In answer to your first question, we are herewith enclosing a copy of an opinion which was rendered by this department on November 29, 1941, to Hon. S. F. Wier, Judge of the Probate Court, Atchison County, Rockport, Missouri, and which we think answers your question.

Now turning to your second question, which is as follows:

"Does the wording of that section indicate that the public administrator is to perform, as there indicated, upon only those estates of which he is administrator or does this section affect him in all the capacities under which he may be acting as public administrator?"

Section 301, page 236, Laws of Missouri, 1941, provides as follows:

"The public administrator shall before the first day of the regular term of the probate court after the expiration of one year after his successor in office shall have qualified publish notice of final settlement as is provided in Section 229, of the Revised Statutes of Missouri, 1939, for all estates in his charge as public administrator in which final settlement can be made during that term of court. Upon the first day of said term, the Probate Judge shall upon his own motion, order the public administrator to account for and deliver all money, property or papers belonging to all estates in his hands in which final settlement can not be made during that term of court, to his successor in office, or to the heirs of said estate, or to any executor or administrator regularly appointed, as provided by law, and such accounting and delivery shall be accomplished during the term

of court. Provided, that when the Public Administrator shall turn over the assets of an estate to his successor in office, or to any other executor or administrator regularly appointed as is provided by law, and before any final distribution has been made of the assets of the estate, the Probate Judge shall allow him compensation based on the proportionate part of the services and trouble rendered for the period of time such Public Administrator actually served as such administrator, and provided that such compensation for services rendered by both the original and succeeding administrator who shall complete the work of such administration shall not exceed a commission of five per cent on personal property and all money arising from the sale of real estate."

It will be noted from a reading of Section 301, supra, that said section provides that the probate judge shall upon his own motion order the public administrator to account for and deliver all money, property or papers belonging to all estates in his hands in which final settlement cannot be made during that term of court. It is our opinion that the wording of this section is unambiguous and when the motion is made by the probate judge, the duty is immediately cast upon the public administrator to make final settlement of all estates in his hands in which final settlement cannot be made during that term of court.

In the case of *Columbia Weighing Mach. Co. v. Rockwell*, 38 S. W. (2d) 508, 1. c. 510, the court said:

"\* \* \* We are not permitted to construe plain and unambiguous language in a statute.\* \* \*"

Therefore, in answer to the first portion of Question 2 of the opinion request, it is our opinion that the public administrator must turn over all moneys and all papers and property in all estates in his hands in which final settlement cannot be made during that term of court. By the statutory wording "during that term of office" is meant the first regular term of the probate court after the expiration of one year after his successor in office shall have qualified.

CONCLUSION

From the foregoing, it is the opinion of this department that under Section 301, Laws of Missouri, 1941, page 286, a public administrator whose statutory term of office has expired, shall at the first regular term of the probate court, after the expiration of one year after his successor in office shall have qualified, make final settlement of all estates in his hands which he can settle at that term of court, and all remaining estates in his hands, regardless of the nature of the estates, must be turned over to his successor during that term of court,

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK  
Attorney General

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