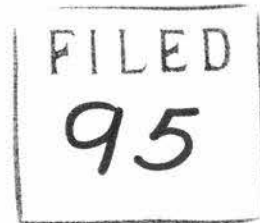


PROBATE COURTS:

Persons signing administrator's bond as attorney in fact for surety may act as appraiser of estate for inheritance tax purposes.

February 27, 1950



Honorable Joe C. Welborn  
Attorney at Law  
Bloomfield, Missouri

Dear Mr. Welborn:

This department is in receipt of your recent request for an official opinion. This request is as follows:

"The Probate Judge has asked me to write you for an opinion on the question whether or not a person who signs an administrator's bond as Attorney in Fact for the surety, may also act as appraiser for State Inheritance Tax purposes.

"I will appreciate an official opinion from your office as soon as convenient."

Section 585, Laws Missouri 1945, page 70, provides for the appointment by the probate court of appraisers of estates for inheritance tax purposes. This section reads in part as follows:

"\* \* \*If it appear that said estate may be subject to such tax, it shall be the duty of the court to \* \* \* appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this act. \* \* \*" (Underscoring ours.)

The attorney in fact who signs an administrator's bond for the surety is not, of course, the executor or administrator, and we assume that he is not acting as attorney for the executor, administrator or anyone beneficially interested in the estate. The only question to be determined then is whether or not a person who merely signs an administrator's bond as attorney in fact for the

Honorable Joe C. Welborn

surety is beneficially interested in said estate so as to prevent his appointment as appraiser of the estate under Section 585, supra.

An attorney in fact is one who is given authority by his principal to do a particular act not of a legal character; Treat v. Tolman, 113 F. 892, 51 C.C.A. 522. In this instance, we assume that the attorney in fact had only the authority to sign the bond for the surety. After the signing of the bond, he owes no further duty to his principal, nor has he any liability under the bond. The only interest he could possibly possess is that same interest which his principal surety has in the estate, that interest being the proper performance by the administrator of his duty regarding the estate. And the surety would have no reason to have any other interest in the appraisal of the estate for inheritance tax purposes except that it be proper and valid.

We fail to find where the attorney in fact has any beneficial interest in the estate which would preclude him from qualifying as appraiser of the estate for inheritance tax purposes.

#### CONCLUSION

It is therefore the opinion of this department that a person who signs an administrator's bond as attorney in fact for the surety does not have, by reason of acting as such attorney in fact, such a beneficial interest in the estate so as to preclude him from qualifying as appraiser of the estate for inheritance tax purposes.

Respectfully submitted,

RICHARD H. VOSS  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General