

WILLS:
PROBATE COURT:
ADMINISTRATOR WITH
WILL ANNEXED:

Probated will should not be allowed. Will presented for probate too late under the terms of Section 468.470, RSMo 1949.

November 21, 1951

Mr. A. R. Alexander
Judge of Probate Court
Clinton County
Plattsburg, Missouri



Dear Sir:

This will acknowledge receipt of your recent request for an official opinion of this department. The pertinent part of same is as follows:

"Letters of administration were issued July 11, 1950. Publication of the administrator's notice was begun July 19, 1951. The administrator's bond was filed and inventory and appraisal made. The only property listed was a town lot and a few dollars cash. The administrator performed no other duties, and made no semi-annual settlement, final settlement would be due at the August term, 1951.

"On March 5th, 1951, a will was mailed to the probate court from a bank with a statement that it had just been found. No person ever appeared to apply for probate of the will, and it remained sealed in the office files. The administrator was notified. On July 23, 1951, the administrator, an heir, appeared and filed application for probate of the will.

"Should an administrator with will annexed be now appointed? If so, must he publish the usual administrator's notice? And if so, does the administration of the estate extend through the full year from the date of the appointment of the administrator with the will annexed? The statutes involved seem to be Secs. 461.210, 461.440 and 468.580, RSMo 1949."

Mr. A. R. Alexander

We believe the answer to your request is found in Section 468.470, RSMo 1949, which reads as follows:

"When any will is exhibited to be proven, the court, or judge, or clerk thereof in vacation may immediately receive the proof and grant a certificate of probate, or, if such will be rejected, grant a certificate of rejection; provided, however, no proof shall be taken of any will nor any certificate of probate thereof issued, unless such will shall have been presented to a probate court, or judge or clerk thereof in vacation, within one year from the date of the first publication of the notice of granting letters testamentary or of administration that may have been granted by any probate court in the state of Missouri, on the estate of the testator or named in such will so presented."

We believe the fact that his will was not presented to you for probate until July 23, 1951, a year and four days after the first publication of the administrator's notice was begun on July 19, 1951, a year and four days after the first publication of the administrator's notice was begun on July 19, 1951, precluded you from allowing the probate of this will. In order for you to allow the probate of the will the same without doubt would necessarily have had to have been presented to you before the 19th day of July, 1951, or within the one year period in which wills must be presented for probate after the first publication of letters of administration.

Also in this connection we wish to cite you the case of State ex rel. v. Bigger, 117 S.W. (2d) 347, 352 Mo. 502, decided by our Supreme Court in 1944 in which they discussed Section 468.470, supra. In this opinion the court referred to the case of Wyers v. Arnold, 347 Mo. 413, and said as follows:

"There we held that the limitation in this section on the time for probating a will is reasonable, basing our conclusion on the premise that there is no natural or inherent right to dispose of property by will; that the state has the power to prohibit such disposition entirely and, of course, has the lesser power to prescribe the time for probating a will. We said: 'One of the objects of administration is an orderly settlement of the deceased's affairs and the protection and lawful distribution of his property within a reasonable length of time.'"

Mr. A. R. Alexander

In view of the foregoing we feel that this matter can be closed in its regular course.

CONCLUSION

It is, therefore, the opinion of this department that this will, which was presented too late, cannot be probated, and that the probate of this estate should continue to a conclusion in due course.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General