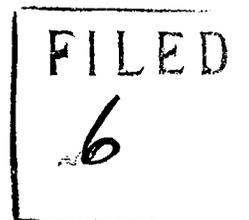


INHERITANCE TAX:
PROSECUTING ATTORNEY:

Prosecuting Attorney not qualified
to act as appraiser in fixing state
inheritance taxes.

February 6, 1951



Honorable J. Hal Moore
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Sir:

This department acknowledges receipt of your request for an opinion which reads as follows:

"I would like your opinion as to whether it is lawful for the Prosecuting Attorney to be appointed appraiser for inheritance tax of a deceased person's estate."

The procedure for fixing and determining inheritance taxes due the State of Missouri is to be found in Chapter 145, p. 1424, RSMo 1949, Section numbers hereafter referred to are sections of RSMo 1949.

Section 145.150 authorizes the probate court upon his own motion or on the application of the Prosecuting Attorney or other persons to appoint some qualified tax paying citizen of the county as appraiser to appraise and fix the taxable value of any property or interest therein or income therefrom subject to the payment of inheritance tax under the provisions of Chapter 145.

Subdivision 4 of Section 145.150 requires such appraiser when appointed to take, subscribe and file with the appointing court an oath to faithfully and impartially discharge his duties as such appraiser. Thereupon such appraiser shall fix a time and place for hearing evidence as to the proper amount of such inheritance tax and give notice of such hearing by mail to all interested persons, including the Prosecuting Attorney of the county wherein the estate is being administered.

Section 145.270 makes it the duty of the Prosecuting Attorney to represent the state at all hearings, proceedings and trials in the probate and circuit courts had under Chapter 145. The Attorney

Honorable J. Hal Moore

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General, at the request of the State Director of Revenue, is required to assist the Prosecuting Attorney in any such hearings, proceedings or trials.

Section 145.280 requires that the Prosecuting Attorney of the county wherein the estate is being administered, on his own initiative or at the request of the Director of Revenue, institute suits in any court of competent jurisdiction for the recovery of unpaid state inheritance taxes.

Inheritance tax hearings inevitably center around the value of taxable property. The state and Prosecuting Attorney are interested in the greater valuation, the taxpayer in the lesser.

It is a fundamental of the law, deep rooted in justice and principle, that no person in a judicial or quasi-judicial position may sit in judgment on matters in which he has a personal interest or in which those whom he represents may be financially involved. The duty of the Prosecuting Attorney is first to represent the state, his county and its citizens. It is too obvious for argument that he would not be a qualified appraiser for the purpose of fixing the amount of inheritance taxes due the State of Missouri and be paid by persons whose interests may be opposed to those of the State of Missouri.

CONCLUSION

It is the opinion of this department that the Prosecuting Attorney of a county wherein an estate is being administered is not qualified to act as appraiser for the purpose of fixing inheritance taxes due the State of Missouri.

Respectfully submitted,

GILBERT LAMB
Assistant Attorney General

APPROVED BY:

J. E. TAYLOR
Attorney General