

ADMINISTRATION: SURVIVAL  
OF PERSONAL INJURY CLAIM:  
APPOINTMENT OF ADMINISTRATOR,  
AND SPECIAL ADMINISTRATOR FOR  
NON-RESIDENT:

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"Personal representative" as used in Par. 2, Sec. 537.020, RSMo 1949, means executor or administrator of deceased person's estate. "Representative" as used in Par. 3, of said section means special administrator for deceased non-resident, whose powers are limited to those provided in said paragraph. Ancillary administrator of non-resident's estate, under administration statutes may also be appointed. But only when proper application and proof of facts involved are made, and court is convinced of sufficiency of same, is it mandatory to appoint administrator for deceased resident, or ancillary administrator, and or special administrator for deceased non-resident.

June 23, 1953

Honorable Max E. Hall  
Judge of the Probate Court  
Mt. Vernon, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

"Under provisions of Par. 2 Sec. 537.020, what is meant by Personal Representative? Does this mean Administrator with general powers as such and usual Letter issue? Par. 3 limits the appointment for purpose of being sued and defending suit on non-resident decedents. In this paragraph does personal representative mean a special office or Administrator in usual sense? If non-resident dies in auto accident in county and the car is within county at the time of appointment, then would fact that this personal property is within county enlarge power of court to appoint a general Administrator because property may need care etc.? Note Par. 2 does not limit appointment for being sued and defending action as does Par. 3. Par. 2 says court is required to make appointment. Par. 3 says court shall have power. Which, if either is mandatory?"

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Section 537.020, RSMo 1949, to which attention is called in the opinion request, reads as follows:

"1. Causes of action for personal injuries, other than those resulting in death, whether such injuries be to the health or to the person of the injured party; shall not abate by reason of his death, nor by reason of the death of the person against whom such cause of action shall have accrued; but in case of the death of either or both such parties, such cause of action shall survive to the personal representative of such injured party, and against the person, receiver or corporation liable for such injuries and his legal representatives, and the liability and the measure of damages shall be the same as if such death or deaths had not occurred. Causes of action for death shall not abate by reason of the death of any party to any such cause of action, but shall survive to the personal representative of such party bringing such cause of action and against the person, receiver or corporation liable for such death and his or its legal representatives.

"2. The right of action for death or the right of action for personal injury that does not result in the death, shall be sufficient to authorize and to require the appointment of a personal representative by the probate court upon the written application therefor by one or more of the beneficiaries of the deceased. The existence of the right of action for death or personal injury that does not result in death shall be sufficient to authorize and to require the appointment of a personal representative for the person liable for such death or injury by the probate court upon his death upon the written application of any person interested in such right of action for death or injury.

"3. Where a non-resident of the state negligently causes such injury or death

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in this state, and such nonresident is killed or dies, the probate court of the county where the casualty occurred shall have power to appoint a representative of such deceased for the purpose of being sued and defending any such foregoing action herein."

The inquiries are concerned with the meaning of the terms "personal representatives," and "representative" as used in paragraphs 2 and 3 of above quoted section. Ordinarily, these terms refer to an executor or administrator, and it was so held in the case of *Tompkins v. Smith*, 103 F. (2d) 936. At 938 the court said:

"The statute is not lacking in clarity. The phrase 'legal representatives' has an accepted meaning which includes 'executor.' See *Briggs v. Walker*, 1898, 171 U.S. 466, 19 S. Ct. 1, 43 L. Ed. 243. In that case the Supreme Court said at page 471, 19 S. Ct. at page 3: 'The primary and ordinary meaning of the words "representatives," or "legal representatives," or "personal representatives," when there is nothing in the context to control their meaning, is "executors or administrators," they being the representatives constituted by the proper court (citing authorities)' \* \* \*."

Again, in the case of *Nudelman v. Thimbles*, 40 S.W. (2d) 475, the term "personal representative," was held to have a broader meaning than executor or administrator. At l. c. 477, the St. Louis Court of Appeals said:

"We concede that, in legal usage, the term 'legal representatives' ordinarily refers to executors and administrators, but that is not the only sense in which it may be employed. To the contrary, the meaning to be attached to the term in a particular instance will be determined from the context, and the intent with which the expression is used, and, if those considerations are such as to indicate a meaning different from the ordinary one, the courts will not hesitate so to construe it. 36 C.J. 978."

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Under the provisions of paragraph 2, Section 537.020, supra, when a proper application is made to the probate court of the county in which one died, and a showing is made that the right of action for personal injuries not resulting in death, or the right of action for personal injuries resulting in death were possessed by such person at the time of his death, said rights of the deceased survive, and such application and showing of facts are sufficient to authorize and require the probate court to appoint a personal representative of the deceased, to prosecute and enforce the rights of the deceased in whatever legal manner the facts of the case may justify.

From the context in which the term "personal representative" is used in paragraph 2 of Section 537.020, supra, it is believed that such term was intended to be given its ordinary or usual meaning by the legislature, and that it refers to executors and administrators, since there is no indication that the legislature intended to give said term some other or different meaning.

Therefore, in answer to the first inquiry, it is our thought that the term "personal representative," as used in paragraph 2, Section 537.020, supra, means an executor or administrator of the estate of a deceased person and who is granted letters testamentary or of administrator under the provisions of Section 461.010, RSMo 1949, for the purpose of administering the estate of said deceased person.

From the definitions of "representative," "personal representative," and "legal representative," are given in above cited cases, it is believed that the term "representative" as used in paragraph 3, Section 537.020, supra, means an administrator of the deceased non-resident. However, from the context in which the term is used, it appears that an administrator thus appointed was not intended to have the powers and duties granted to executors and administrators generally under Missouri administration statutes, but that said administrators are special officers whose power and duties are limited to those specifically provided by said paragraph. We find it unnecessary to repeat the whole of paragraph 3, supra, but we do wish to repeat and emphasize the only statutory power and duty of administrators appointed under authority of said paragraph, as follows:

"\* \* \*to appoint a representative of such deceased, for the purpose of being sued and defending any such foregoing action herein."

(Underscoring ours.)

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Hereafter, for the sake of brevity, and to avoid confusion, we will refer to the representative to be appointed under the above quoted authority as "special administrator."

The next inquiry of the opinion request reads as follows:

"If non-resident dies in auto accident in county and the car is within county at the time of appointment, then would fact that this personal property is within county enlarge power of court to appoint a General Administrator because property may need care?"

For the purpose of this request it is assumed that by the words "general administrator" is meant the administrator as provided for in Chapter 461, RSMo 1949. That administrator will hereafter be referred to as "general administrator" for the purpose of this opinion.

The inquiry does not indicate if the writer meant to inquire whether the special administrator appointed under the circumstances and for the purposes provided by paragraph 3, Section 537.020, supra, might be granted letters to administer the estate of the non-resident located within the county under the provisions of Section 461.010, RSMo 1949, supra, or whether the writer meant to inquire if the court had power to appoint a special administrator under paragraph 3, supra, and then to appoint another person as general administrator to administer said non-resident's estate.

Regardless of the exact nature of the inquiry, it is obvious that the personal representative referred to in paragraph 3, supra, is a special officer whose powers and duties are limited by this portion of the tort actions statutes, and that for reasons given above, such special administrator lacks the power to administer the non-resident's estate. If the non-resident's estate is to be administered then this can only be done in accordance with the provisions of the administration statutes. That is the direct sense of the statutes.

Section 1.090, RSMo 1949, in regard to laws in force and construction of statutes is as follows:

"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

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When a proper application and proof is presented to the probate court requesting that an administrator for the non-resident be appointed, in accordance with the applicable statutes, and the court is satisfied that the necessity exists for the appointment of such administrator then, and then only, can the court appoint such an administrator. It is believed that the court cannot appoint an administrator for a deceased non-resident until proper application and proof is presented, and that the court cannot of its own motion appoint such administrator in the absence of the application and proof being made.

In the event administration was begun within the state or country of the non-resident's domicile, then the administration proceedings in the probate court of the county of this state in which the non-resident died owning real or personal property will be auxilliary or ancillary to that of the domiciliary administration.

Should there be no domiciliary administration, then the probate court of the county in which the non-resident died, may upon proper application and proof appoint an administrator to take over the assets and to generally administer the estate of said non-resident in said county. Such was held to be the proper procedure in the case of *Wood v. Matthews*, 73 Mo. 477. At l. c. 483, the court said:

"The defendant's counsel contends that the administration on the estate of Jane Simpson in this State, before there was any administration in the state of Kansas, where she resided at the time of her death, was premature, and conferred no right upon the administrator in this State to sue, and cites *Spradling v. Pipkin*, 15 Mo. 118, in which Judge Gamble, delivering the opinion to the court, says: 'Judge Jackson, on delivering the opinion of the court in *Stevens v. Gaylord*, 11 Mass. 263, properly declares the law in this language: "It is true that such auxilliary administration is not usually granted until an administrator is appointed in the place of the deceased's domicile. But this cannot be a necessary prerequisite, for if so, and it should happen that administration is never granted in the foreign state, and the debts due here, under such circumstances, to a deceased person, could never be collected; and the debts due

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from him to citizens of the state might remain unpaid." We have discovered no error in this record that would justify a reversal of the judgment, which is, therefore, affirmed."

When administration is had in Missouri upon the estate of a non-resident, Section 466.080, RSMo 1949, provides how distribution shall be made, and 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."

If the court should appoint an ancillary administrator of the estate of the deceased non-resident in accordance with the administration statutes, then such administrator would have power and authority to administer the estate of such non-resident within the county.

It is further believed that in the event the court should appoint an ancillary administrator under the above mentioned circumstances, that court will not be precluded, upon proper application and proof being subsequently made from appointing a special administrator of said non-resident, since the statutes do not prohibit such action.

When an application for the appointment of an administrator of the estate of a deceased person, is made to the probate court, and the evidence shows that the only assets of the estate is a right of action for personal injuries of the deceased which resulted in death, or did not result in death, and which survives to the beneficiaries of the deceased person under the provisions of paragraph 2, Section 537.020, supra, and the court is satisfied as to the sufficiency of the application and proof of the facts involved, then it shall be the mandatory duty of the court to appoint said administrator.

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When an application for appointment of a special administrator of a deceased non-resident who dies in the county as provided by paragraph 3, Section 537.020, supra, and the court is satisfied as to the sufficiency of the application and facts involved, and particularly of the necessity for the appointment of such administrator, then it shall be the mandatory duty of the court to appoint said administrator.

In answer to the second inquiry of the opinion request, it is our thought that the "personal representative" mentioned in paragraph 2, Section 537.020, supra, refers to the administrator appointed to administer the estate of the deceased in accordance with the administration statutes, Chapter 461, et seq.

#### CONCLUSION

It is therefore the opinion of this department that the term "personal representative," as used in paragraph 2, Section 537.020, RSMo 1949, is construed to mean an executor or administrator of the estate of the deceased person, and that the term "representative" as used in paragraph 3, of said section is construed to mean a special administrator for a deceased non-resident of the state, appointed only for the purposes, and whose powers are limited to those specifically provided by said paragraph. That the provisions of said paragraph do not prohibit the appointment of one to generally administer the estate of such deceased non-resident within the county, as provided by the applicable administration statutes. That only when an application for appointment of an administrator of a deceased resident under the provisions of said administration statutes, and under the circumstances provided by paragraph 2, or the application for the appointment of a special administrator of a deceased non-resident under the provisions of paragraph 3, of Section 537.020, supra, is made, and the court is convinced of the sufficiency of the application and proof of the facts involved is it the mandatory duty of the court to appoint the general administrator or special administrator in accordance with the request made in the application.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON  
Attorney General