

INHERITANCE TAX: Property or money transferred to a trustee  
TRUSTS: for the purpose of beautification and care  
of the graves of testator and his wife, is  
subject to Missouri inheritance tax.

January 6, 1955



Honorable Frank W. May  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Mr. May:

Your letter dated December 29, 1954, requesting  
an opinion of this office reads:

"I would like to have an opinion on the  
question of State Inheritance Tax.

"The deceased has a Will and left quite  
a portion of his estate to Trustees for  
the purpose of placing flowers upon his  
and his wife's graves every Saturday  
morning until all of the trust was ex-  
pended.

"The trust provision provides that the  
trust fund is to be placed in the United  
Bank of Farmington and, that the flowers  
are to be purchased from a florist and,  
not less than \$1.00 spent each week for  
flowers for his and his wife's graves.

"If there is a tax on the amount left in  
trust, would there be any exemptions, if  
so, how much?"

The provision in the will creating the trust is  
as follows:

"THIRD: All of the rest, residue and re-  
mainder of my estate whatsoever, real,  
personal and mixed, and wherever situated,  
I want converted in to cash, and the pro-  
ceeds to be deposited in the United Bank

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of Farmington as a trust fund. This money to be used only for flowers, and the upkeep of the graves of, \_\_\_\_\_ Charles C. \_\_\_\_\_, and wife Glenn \_\_\_\_\_ . I want fresh flowers from a greenhouse put in a nice container, and placed at the head of each grave on \_\_\_\_\_ Saturday of every week the year round as long as the fund lasts. Not less than one dollar's worth for each grave. The graves to have a slight mound at all times, also, the grave lot to be kept clean and mowed off during the summer season. -- all expenses to be paid out of this fund."

You stated in a subsequent letter that the amount of the trust fund would be approximately \$6,000.00.

The fund is made subject to inheritance tax by Section 145.020, RSMo 1949, which reads, in part, as follows:

"1. A tax is hereby imposed upon the transfer of any property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise, to persons, institutions, associations, or corporations, not herein exempted, in the following cases:

"(1) When the transfer, by will or the intestate laws, is from any person who is a resident of this state at the time of his death;"

\* \* \*

Exemptions from the inheritance tax are provided by Section 145.090 and Section 145.100, RSMo Cum. Supp. 1953. Those sections read:

"145.090. Exemptions. ---The following shall be exempt from taxes imposed in this chapter:

"(1) All transfers, direct and indirect, including transfers from a trustee or trustees to another trustee or trustees,

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of any property or beneficial interest therein to be used solely for county, municipal, religious, charitable or educational purposes in this state.

"(2) All transfers, direct and indirect, including transfers from a trustee or trustees to another trustee or trustees, of any property or beneficial interest therein to be used solely for county, municipal, religious, charitable or educational purposes in any other state or territory of the United States, foreign state or nation, which at the time of the death of the decedent imposed no legacy, succession or death tax of any character in respect to property transferred for similar uses in this state, or which by law exempts transfers made for similar uses in this state from all such tax on condition that this state shall exempt transfers made for such uses in such other state, territory or nation from any such taxes imposed by this state.

"(3) All transfers of any property or beneficial interest therein not exceeding the clear market value of twenty thousand dollars in excess of the aggregate value of all marital rights which would accrue to the surviving spouse upon renunciation of a will or death of the decedent intestate to a surviving husband or wife.

"(4) All transfers of any property or beneficial interest therein not exceeding the clear market value of fifteen thousand dollars to any of the lineal descendants of the decedent who may be idiotic, insane, blind, deformed, or otherwise mentally or physically incapacitated from earning a living.

"(5) All transfers of any property or beneficial interest therein of the clear

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market value of five thousand dollars to each of the persons other than the surviving husband or wife or an incapacitated lineal descendant listed in subdivision (1), subsection 1 of section 145.060.

"(6) All transfers of any property or beneficial interest therein of the clear market value of five hundred dollars to each of the persons described in subdivision (2), subsection 1 of section 145.060.

"(7) All transfers of any property or beneficial interest therein of the clear market value of two hundred and fifty dollars to each of the persons described in subdivision (3), subsection 1 of section 145.060.

"(8) All transfers of any property or beneficial interest therein of the clear market value of one hundred dollars to each of the persons described in subdivision (4), subsection 1 of section 145.060.

"(9) All transfers of any property or beneficial interest therein of which the clear market value shall be less than one hundred dollars shall not be subject to any tax."

"145.100. Transfers to religious, charitable, etc., institutions exempt.--  
1. When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association, or corporation, bishop, minister of any church, or religious denomination in this state to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject

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to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members.

"2. The exemption herein granted shall extend to persons, organization, associations, and corporations organized under the laws of other states and residents therein, provided the law of the other state grants to persons, organizations, associations, and corporations organized under the law of Missouri and resident therein, a like and equal exemption."

The type of trust at hand is apparently permitted by Section 214.140, RSMo 1949. The trusts created under Section 214.140 are declared in Clark vs. Crandall, 319 Mo. 87, 5 S.W. (2d) 383, 388, to be private trusts, and not public or charitable trusts. There being no exemption by statute of private trusts of this type, we must conclude that none exists.

#### CONCLUSION

It is, therefore, the opinion of this office that property or money transferred to a trustee for the purpose of beautification and care of the graves of testator and his wife, is subject to Missouri inheritance tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON  
Attorney General