

TOWNSHIP COLLECTORS:
PERSONAL REPRESENTATIVE
TO SETTLE ACCOUNTS, WHEN:
DISPOSITION OF TOWNSHIP
PERSONAL PROPERTY:

Personal representative of deceased township collector to have charge of all books, accounts, money or other personal property of township in possession or control of collector at time of death. Personal representative to make final settlement of accounts with county court in same time and manner as collector personally, provided by Sec. 139.420, except personal representative not required to pay tax funds to county treasurer and ex officio collector, or make return of delinquent taxes to county court. He shall turn over possession and control of all such township books, accounts, money or other personal property to successor-collector less any legal fees earned during term and previously unpaid deceased.

February 1, 1955

Mr. Leon McAnally
Prosecuting Attorney
Dunklin County
Dunklin County Courthouse
Kennett, Missouri



Dear Sir:

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

"The collector of Salem Township died recently and has funds in the Bank under his name as collector in several different accounts such as school fund etc. As of this date his successor has not been appointed. The family of deceased, County Clerk and County Court, it seems, have received several different opinions from various sources as to procedure to follow in order to transfer these funds from deceased' account to those entitled to receive same and to allow deceased' family to retain collector fees which deceased was entitled to retain. None seem willing to take action without an opinion from the Attorney General. Will you please give me your opinion as to who should take charge of the accounts and books of the deceased collector."

It has long been an elementary principle of law that when one dies owning personal property, the title, right of possession or control of same immediately passes to his executor or administrator and not to his heirs. The executor or administrator holds such property pending administration proceedings, and after payment of debts and other legal charges finally turns over possession of the remainder to the legatees named

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in decedent's will, or in event he dies intestate, to his heirs. This procedure must be followed in every instance, regardless of whether or not the decedent left any creditors, and it is so well established by applicable Missouri statutes and court decisions, that it is believed to be unnecessary to cite any authority on the subject.

The administration statutes of Missouri are quite clear on the principle of law mentioned above, and no one doubts the authority under same of an executor or administrator to take possession and control of his decedent's personal property, when such decedent was a private citizen. However, when the deceased was a public official and had personal property in his possession and under his control at the time of his death belonging to a county or other political subdivision of the state, would the personal representative as such take charge of, and be legally accountable for such county property? If not, then who would be required to take possession and be accountable to the county for its property?

It is our contention that the personal representative of the deceased public officer, and in the instant case, the personal representative of the deceased township collector shall take charge and be responsible for the township personal property until such time as it can be turned over to the deceased official's successor, by said personal representative.

In support of our contention, we call attention to the general rule requiring a public officer or his legal representative to turn over possession of all public property received by him in his official capacity, to his successor. Said general rule is given under the title of "Public Officers," Volume 43, page 123 of American Jurisprudence, and is as follows:

"It is the duty of every public officer, or of his personal representative on his death, to account for and pay over or deliver to his successor all public moneys, books, papers, and other property in his possession belonging to the office. If a public officer does not have authority to receive anything but coin, treasury notes, national bank notes, or other current money, auditing officials have no right to accept anything less in the settlement of his accounts, such as checks, notes, drafts, bonds, or other obligations. If,

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however, the officer has the funds on deposit in an approved depository, he need not withdraw them or physically hand them over; he may direct the bank in which they are on deposit to transfer them to the account of the successor."

Again, Section 52.190, RSMo 1949, prescribes the procedure a personal representative of a deceased county collector shall follow in taking possession of tax books, money or other county property which was in the possession of such decedent and turning over possession of same to the successor in office. Said section reads as follows:

"Death of collector--duties of his representatives.--Whenever any collector shall die after he has received the tax book for any year, his legal representatives shall hand over at once to the county clerk the tax book, and shall also pay over to his successor in office, at once, out of the estate, all moneys which have been collected by the deceased collector and then in his hands."

We are fully aware of the fact that no Missouri statutes specifically provide that the executor or administrator of a deceased township collector shall immediately take charge of, be responsible for, and the disposition he shall make of all township personal property in the lawful possession of the collector at the time of his death.

While township collectors are not specifically referred to as such in Section 65.510, RSMo 1949, providing that when the term of any township officer expires he shall turn over possession of all books, papers, or other property belonging to the office, to his successor and take his receipt therefor, or in case of the official's death, this duty shall be performed by his personal representative. The section refers to the expiration of the officer's term, but it is our contention that its provisions would also govern in those instances when the official dies before the end of the term for which he was elected or appointed. Said section reads as follows:

"Whenever the term of office of any township officer shall expire, and others are elected or appointed and qualified as their

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successors, such successors shall, immediately after entering upon the duties of their office, demand and receive from his or their predecessors, or their legal representatives, all the books, papers and money under his or their control belonging to such office, and such books, papers and other property shall be delivered upon oath that the same are all the moneys, books, papers and other property under his control belonging to such township; duplicate receipts shall be given the outgoing officer for the same, who shall retain one copy and deliver the other to the township clerk, who shall charge the incoming officer with the value thereof."

It is believed that the legal principle mentioned above is fully applicable in all instances when the deceased was a public official, and had property of a political subdivision of the state in lawful possession and control at the time of his death, there being no evidence of any legislative intent to provide an exception to the general rule, or to enact any statute authorizing a different method of procedure in such instances. Therefore, it is our further belief that the above quoted sections of the statutes indicate a legislative intent that the personal representative of the deceased official is to take charge of all personal property of the political subdivision of the state of which he was an officer, and to properly account for it in the manner provided by said sections.

In view of the foregoing, and in answer to the inquiry of the opinion request, it is our thought that the executor or administrator of the deceased township collector referred to in said inquiry shall take possession and have charge of all books accounts and any other personal property of the township which said deceased collector, by reason of his office, had possession and control of at the time of his death. Said executor or administrator shall be legally responsible for, and shall turn over possession and control of all such township personal property to the successor of the deceased, less any legal fees or commissions to which the deceased was entitled for official services rendered during his term, and which fees shall become a part of the assets of his estate.

The opinion request contains only one inquiry, but by a later request of the writer, we have been authorized to include a second inquiry, and to treat same as a part of the original request.

The second inquiry asks with whom the personal representative

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of the deceased township collector shall make a final settlement of his accounts of township funds or property for the deceased, before possession and control of same are turned over to the successor-collector.

Under the provisions of present statutes pertaining to the administration of the estates of deceased persons, administration is had only upon that property comprising the estate of the deceased, and the personal representative is not ordinarily chargeable with any property not a part of the estate. However, there is an exception to this general rule, as we have previously shown, in those instances when a township officer, or in case of his death his personal representative, takes charge of all township personal property in control or possession of said official at the time of his death, and in due time turns over possession of same to the successor in office. Such procedure is authorized by Section 65.510, supra.

No section of the statutes specifically states that the personal representative of a deceased township officer shall make settlement of accounts for the deceased with a particular officer, or in a particular manner. Section 139.420, RSMo 1949, requires a township collector to personally make his final settlement with the county court of his county, within the time and manner provided therein. Said section reads in part as follows:

"1. The township collector of each township, at the term of the county court to be held on the first Monday in March of each year, shall make a final settlement of his accounts with the county court for state, county, school and township taxes; produce receipts from the proper officers for all school and township taxes collected by him, less his commission; pay over to the county treasurer and ex officio collector all moneys remaining in his hands, collected by him on state and county taxes; make his return of all delinquent or unpaid taxes, as required by law, and make oath before the court that he has exhausted all the remedies required by law for the collection of such taxes."

It is our thought that since the personal representative is chargeable with such township property and must turn same over to the successor, and also since he acts for and in behalf

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of decedent, he is the proper person to make the settlement of accounts for the deceased to the same extent and in the same legal manner as the collector might have done. Section 139.420, supra, requires the township collector to make final settlement of his accounts with the county court, and it is believed that the personal representative shall also follow the procedure therein provided with two exceptions, namely: (1) The personal representative is not required to pay over all state and county tax money remaining in his hands to the county treasurer and ex-officio collector. (2) He is not required to make return of all delinquent or unpaid taxes and make the statement under oath to the county court that he has exhausted all legal remedies to collect such taxes.

The reasons for such exceptions are quite obvious, when it is recalled that the personal representative is authorized to turn over the township personal property to the successor in office, and to no other.

The personal representative is not legally authorized to collect any taxes in the township, consequently that part of the section regarding tax collections, does not apply to the personal representative.

In answer to the second inquiry, it is our thought that the personal representative of the deceased township collector shall make final settlement of the deceased's accounts with the county court, in the same manner provided by Section 139.420, supra, for the making of such settlement by township collectors personally, with the two exceptions mentioned above.

CONCLUSION

It is, therefore, the opinion of this department that when the death of a township collector occurs during his term of office, his personal representative shall have charge of all books, accounts, money or other township personal property that were in the possession or under control of said collector at the time of his death. Such personal representative shall make final settlement of accounts of township funds for deceased to the county court within the same time and manner as the collector was required to do under the provisions of Section 139.420, RSMo 1949, except that the personal representative is not required to pay over tax funds in his hands to the county treasurer and ex-officio collector, and is also not required to make return of delinquent and unpaid taxes to the county court. He shall turn over possession and control of all such township books, accounts,

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money or other personal property to the successor of the deceased collector, less any legal fees earned but unpaid during the term of said collector.

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

Very truly yours,

JOHN M. DALTON
Attorney General

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