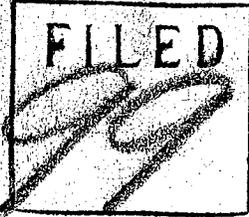


DOWER: If a husband dies intestate a widow gets one-half of the lands of her deceased husband if the husband is survived by issue and if he died after January 1, 1956; under the new Probate Code dower which was not vested was abolished as of January 1, 1956.



August 10, 1956

Honorable Thomas G. Woolsey
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"As you know Section 474.010 of the new Probate Code provides that if a decedent died intestate and is survived by issue, his widow inherits one-half of his property. Section 474.110 of said New Probate Code abolishes curtesy and dower but does not effect such estates vested prior to January 1st, 1956.

"Assume the following facts. A man and wife acquired a large acreage of land prior to January 1st, 1956, and title to said lands were in the husband's name alone. The couple had two children born prior to January 1st, 1956. The man died after January 1st, 1956, survived by his widow and two children.

"I would appreciate your construing the aforementioned sections together and rendering me an opinion as to the following:

- "(1) Does his widow get one-half of his lands?
- (2) Does his widow only have a dower interest in said lands?
- (3) If she has dower can she elect to take a child's part of said lands under the provisions of the old Probate Law?

Honorable Thomas G. Woolsey

(4) Is she entitled to dower and one-half of the property?"

The new Probate Code, to which you refer, became effective January 1, 1956, according to Section 1 of House Bill No. 30 of the 68th General Assembly.

As to when dower became vested under the old law we note the following in the case of Bank v. Kirby, 269 Mo. 285, at l.c. 295:

"Appellant simply had an inchoate right of dower in the real estate described in the mortgage. It is a contingent right, the value of which depends wholly upon the death of the husband. [Teckenbrock v. McLaughlin, 246 Mo. 711.] It may be terminated at any time by the death of the wife. It is in no sense a vested right growing out of the contract of marriage, but is a mere expectancy or possibility incident to the marriage relation, contingent on her surviving the husband. * * *"

Section 474.110 of the new Probate Code, to which you refer, reads as follows:

"The estates of curtesy and dower are hereby abolished, but any such estate now vested is not affected by this code."

We construe the above section to mean that the estate of dower is not affected by the going into effect of the section in those instances where a spouse died prior to January 1, 1956, and the estate of dower has vested in the surviving spouse, but that if a spouse dies after the going into effect of the section that the estate of dower does not vest. We do not see that any other construction is possible. Therefore the answers to your second, third, and fourth questions are in the negative.

Your first question is whether, under the situations set forth by you, the widow gets one-half of the lands of her husband. Section 474.010 of the Code reads in part as follows:

Honorable Thomas G. Woolsey

"General rules of descent. - All property as to which any decedent dies intestate shall descend and be distributed, subject to the payment of claims, as follows:

*(1) The surviving spouse shall receive:
(a) One-half thereof if the intestate is survived by issue, father, mother, brother or sister, or their descendants; * * *."

The above answers your first question in the affirmative.

CONCLUSION

It is the opinion of this department that if a husband dies intestate that a widow gets one-half of the lands of her deceased husband if the husband is survived by issue and if he died after January 1, 1956; that under the new Probate Code dower which was not vested was abolished as of January 1, 1956.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc