

TAXES:
TAXATION:
TRUST ESTATES:
WILLS:
COLLECTOR OF TAXES:
EXEMPTION FROM TAXES:
EXECUTOR AND ADMINISTRATOR:

Executor has duty of paying taxes assessed and levied against property for 1956, wherein testatrix dies before said taxes are paid, and wherein she leaves her property for charitable purposes. Collector may collect taxes if executor does not pay them.



March 27, 1957

Honorable Don Chapman, Jr.
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Chapman:

This is in answer to your request for an official opinion from this office which reads as follows:

"A question has arisen here as to whether or not City and School taxes assessed for the year 1956 on the real and personal property of Minnie B. Hedrick, deceased, is collectible.

"Minnie B. Hedrick died on November 6, 1956, a resident of Chillicothe, Livingston County, Missouri.

"Pursuant to the provisions of her last will and testament, which has been admitted to probate in the Probate Court of Livingston County, Missouri, all of the property, real and personal, in said estate, with the exception of a bequest to a church and two specific bequests made therein, is devised and bequeathed to the First National Bank of Kansas City, in trust, for the use and benefit of the Chillicothe Hospital and charitable and indigent patients who are residents of Chillicothe and Livingston County.

"The Chillicothe Hospital is owned and operated by the City of Chillicothe, Missouri, and it appears that under the provisions of the will of Mrs. Hedrick, the property of the trust is to assist financially the Chillicothe Hospital, and thus the City of Chillicothe is the equitable beneficiary of the trust.

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"I wish you would give your official opinion as to whether or not the taxes assessed by the City of Chillicothe for the year 1956 on the real property, situate in the City of Chillicothe, the legal title of which is now in the First National Bank, as trustee, and the personal property, the title to which is now in the executor of the estate and which will eventually be transferred to the trustee or the proceeds thereof be paid to the trustee, can now be legally collected from the trustee or the executor of the estate of Minnie B. Hedrick."

On January 1, 1956, Mrs. Minnie B. Hedrick was the owner of real and personal property located within Chillicothe, Livingston County, Missouri, and Livingston County without Chillicothe. Section 137.075, RSMo 1949, provides that every person owning or holding such property on the first day of January, including all such property purchased on that day, shall be liable for the taxes thereon during the same calendar year. Thus, the first day of January is the crucial date. Section 137.085, RSMo 1949, provides, among other things, that there shall be a lien on the land for taxes assessed and levied in favor of the state, and provides for the enforcement of that tax lien on the land. The other method, in which taxes against realty may be collected in Missouri, is by distraint of the personalty of the taxpayer owing the tax on the realty. This is authorized by Section 139.120, RSMo 1949. Section 140.730, RSMo 1949, provides, among other things, that taxes assessed and levied on personal property shall constitute a debt for which a personal judgment may be recovered against the taxpayer for failure to pay the taxes. See *In re Life Ass'n. of America*, 12 Mo. App. 40, 49, wherein the Court said:

"* * * The right thus given to distraint personal property for 'all taxes,' as well before as after they have become delinquent, shows that all taxes are personal charges against the owner of the property in respect of which they are levied. * * *"

(Emphasis ours.)

From your letter, it appears that on November 6, 1956, the date of Mrs. Hedrick's death, taxes had been assessed and levied against the real and personal property of Mrs. Hedrick, but that they had not been paid. From the foregoing, the result is that on November 6, 1956, Mrs. Hedrick was personally liable for these taxes. However, on that date, she died testate. The problem now becomes one of whether or not these taxes can be collected.

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Mrs. Hedrick's will directed that all her just debts be paid; it left \$1,000.00 to a church; it left 600 shares of stock (a specific bequest) in trust for two named beneficiaries; and finally, it gave all the rest, residue and remainder of her estate, real, personal and mixed, to a trustee, "to be held, administered and distributed as a charitable trust upon the following terms and conditions." It provided the trustees should administer the trust estate and pay over the income to "The Hedrick Foundation" when needed and requested by said foundation for any one or more of the following purposes: (1) to pay the hospital expenses of those indigent persons within the county who received aid from the Chillicothe City Hospital, which is owned by said city; (2) to pay the expenses of operating and maintaining said Foundation; and (3) if the City so desired, to pay for a new hospital or an addition to the hospital or a new nurses' home. The will provided for remainders over if the City of Chillicothe ever ceased to own the hospital.

Thus, when Mrs. Hedrick died testate, the title to her real and personal property passed to the persons to whom it was devised by her last will, but it was subject to the possession of the executor and was chargeable with the payment of the claims against the estate. This is Section 84 of the Model Probate Code adopted in Missouri on January 1, 1956, and is now Section 473.260, RSMo, Cum. Supp. 1955. One of the duties of an executor is to pay all outstanding claims against an estate, and Section 473.397, RSMo, Cum. Supp. 1955, provides that taxes due the state, county, incorporated city, or town is a claim against the estate of a decedent. That section further provides, among other things, that the executor shall pay all taxes without any claim therefor being presented to the court for allowance. Thus, we hold the executor of Mrs. Hedrick's will has the duty to pay the taxes assessed and levied against her property, both real and personal, for 1956. (This opinion does not decide about the taxes for 1957.) If the executor does not pay them, then the collector has the power to proceed against the property as authorized in Sections 137.085, 139.120 and 140.730, mentioned previously in this opinion, or other sections provided by law.

In your letter, you state that it appears as if the hospital owned by the city of Chillicothe is the equitable beneficiary of the testamentary trust of the residue, and that the taxes mentioned above cannot now be collected because the city would be tax exempt. Article X, Section 6 of the 1945 Constitution of Missouri provides as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit, and used exclusively for

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religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

Section 137.100, RSMo 1949, provides as follows:

"The following subjects shall be exempt from taxation for state, county or local purposes:

* * * * *

(6) All property, real and personal actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable, and not held for private or corporate profit shall be exempted from taxation for state, city, county, school, and local purposes; provided however, that the exemption herein granted shall not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes."

These provisions, as construed by the Missouri Supreme Court, en banc, in the case of St. Louis Council of Boy Scouts of America v. Burgess, 240 S.W. 2d 684, require that there must be a showing of a present, actual, regular, and exclusive user of all the property owned by the charity for purposes purely charitable before the property is exempt from taxation, and that mere prospective user for purposes purely charitable is not sufficient to exempt the property from taxation. In our case, the property in the testamentary trust was not being used for charitable purposes on January 1, 1956, which is the crucial date. That this is so was pointed out in an opinion written by this office on November 20, 1956, to the Honorable Roy W. McGhee, Jr., a copy of which is herein enclosed. Furthermore, in the light of Ramsey v. City of Brookfield, 237 S.W. 2d 143, 361 Mo. 857, wherein property was left in trust to the City of Brookfield so the city could build a hospital, query whether the City of Chillicothe is the equitable beneficiary of this testamentary trust.

However, in reaching our conclusion in this opinion, we do not decide who the beneficiary of the testamentary trust is. It is not necessary to decide that point. We hold that since the estate is not closed, the testamentary trustee of Mrs. Hedrick's

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will, who at the present time has only bare legal title, does not now have that legal title which is sufficient to raise an equitable title in anyone. It is possible the claims against the estate may exhaust it. If so, no one would be an equitable beneficiary of this trust. At the most, some beneficiary, at the present time has an expectancy of acquiring a benefit. Also, until the estate is closed, the testamentary trustee does not have the authority to touch or administer the property as it is provided in the will. As stated previously, possession is in the executor. This result above is based upon new law, Section 183 of the Model Probate Code, which is now Section 473.617, RSMo, Cum. Supp. 1955, paragraph 4, which reads as follows:

"4. The decree of final distribution is a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interests therein, subject only to the right of appeal and the right to reopen the decree. It operates as the final adjudication of the transfer of the right, title and interest of the decedent to the distributees therein designated; but no transfer before or after the decedent's death by an heir or devisee shall affect the decree, nor shall the decree affect any rights so acquired by grantees from the heirs or devisees."

From reading this paragraph, it is apparent that the testamentary trustee does not now have that full ripened legal title as is contemplated in the will, and will not have it until after there is a decree of final distribution from the court.

CONCLUSION

It is, therefore, the opinion of this office that the executor of Mrs. Hedrick's will has the duty to pay the taxes assessed and levied against her property, both real and personal, for 1956. If the executor does not pay these taxes, then the collector has the power to proceed against the property in the hands of the executor as provided in Sections 137.085, 139.120 and 140.730, RSMo 1949, or other sections provided by law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

JOHN M. DALTON
Attorney General

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Enc.