

DECEASED CONVICTS:
DUTIES OF WARDEN:
PROPERTY OF DECEASED
CONVICTS:
ADMINISTRATION OF ESTATES
OF DECEASED CONVICTS:

(1) The Warden of the Penitentiary is not authorized to deliver property of a deceased convict over to the family or relatives of said deceased convict; such delivery must be made pursuant to the laws of administration of estates.
(2) The venue is to be determined in each particular case as provided in Sec. 473.010, Cum. Supp. 1955.



February 26, 1957

Honorable E. V. Nash, Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Nash:

We have your letter of January 29, 1957, in which you have requested an opinion as set out below:

"It is requested that this office be furnished an official opinion concerning the following:

a. An inmate of this institution dies leaving money credited to his account in the institution's treasury. Does the Warden have the authority to withdraw this money and deliver it to the family or relatives or must such authority for withdrawal and designation of beneficiary originate in the Probate Court of Cole County, Missouri?"

Except for Chapter 460 RSMo 1949, there are no statutory provisions, specifically applicable to deceased convicts, setting forth the procedure of distribution of the property of said parties who are incarcerated at the time of death and who leave money credited to their accounts in the institution's treasury. Section 460.230 directing the trustee to deliver the property of the deceased convict over to the personal representative of the deceased is applicable only in those instances where a trustee has been appointed pursuant to Sections 460.010 and 460.020, and, where said trustee has been entrusted with the care and control of the particular property involved. Further, when an appointment of trustee has been made pursuant to the provisions in Chapter 460, the property, upon the death of the convict, must be delivered over to the personal representative of the deceased party, such provisions clearly indicating that the handling of the property by the trustee upon the death of the

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convict does not dispense with the necessity of administration of the estate since it directs the property to be turned over to the "personal representative" of the deceased, the term "personal representative" meaning executor or administrator.

Although there are provisions in the Probate Code (Sections 473.090, 473.093, 473.097 and 473.103, Cum. Supp. 1955) obviating the necessity of administration in cases where, generally, the estate is small, and which provisions may well apply to the particular estate in question, it is contemplated therein that the proceedings originate in the court and that the distribution under said sections be subject to the jurisdiction of the court for, in Sections 473.090 and 473.093, it is discretionary with the court as to whether or not administration of the estate shall be dispensed with and in the latter two sections an affidavit must be filed with the court showing the existence of certain facts. In other words, the distribution of the proceeds of any estate is subject to the jurisdiction of the court. Supporting this conclusion is the following language from 21 Am. Jur. 377, Section 15:

"Theoretically, administration on a decedent's estate is necessary in all cases, because the title to the personalty does not descend to the next of kin and without administration there would be no legal authority to represent the estate in litigated matters or to collect the assets and apply them to the payment of debts. Administration is perhaps always necessary where the decedent leaves an infant as next of kin or heirs who do not have the legal capacity to agree to a distribution because none but an administrator can bind such heirs in any matter respecting the settlement of the estate. Nevertheless, administration may, under some circumstances, be dispensed with. Since, however, the administration of decedents' estates is purely statutory, an agreement to distribute a decedent's estate without obtaining letters of administration may be prohibited by statute. * * *

Even though it might be more practical in some cases for the Warden to deliver over the property of a deceased convict to the family or relatives of the deceased party, in the absence of any law providing for the same, the estate of said deceased

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party must be administered pursuant to the provisions of the Probate Code as indicated earlier in the opinion.

Another question raised in the opinion request is that of venue. Although it is not necessary to determine this question, this being a matter of concern to the creditors and prospective distributees of the deceased party, and further, the facts in the opinion request being too insufficient from which to determine the venue, inasmuch as there has been a change in the law with respect to such since this office rendered an opinion on the same, this question will be considered and passed on, generally, in this opinion.

The applicable statute is Section 473.010, Cum. Supp. 1955, which reads as follows:

"1. The will of any decedent shall be probated and letters testamentary or of administration shall be granted:

(1) In the county in which the domicile of the deceased is situated;

(2) If he had no domicile in this state at the time of his death and was possessed of lands, in the county in which the land or the greater part thereof lies;

(3) If the decedent had no domicile in this state and was not possessed of lands, in any county in which is located any part of his estate which is subject to administration under the laws of this state;

(4) If the decedent had no domicile in this state and left no property therein in any county in which the granting thereof is required in order to protect or secure any legal right.

"2. If proceedings are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. The proceedings are deemed commenced by the filing of an application for letters; and the proceeding first legally commenced extends to all of the property of the estate in this state, subject to the provisions of section

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473.667.

"3. All orders, settlements, trials and other proceedings pertaining to any estate shall be had or made in the county in which the letters were granted."

From examining said statute it is apparent, immediately, that venue will depend upon the facts of each particular case, the only real problem involved in interpreting said statute being a construction of the term "domicile" with reference to persons involuntarily confined. The term "domicile" has been defined as the place where man has true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has intention of returning -- In re Ozias' Estate, 29 SW 2d 240, not for a mere special or temporary purpose, but with the present intention of making a permanent home, for an unlimited or indefinite period -- In re Schultz' Estate, 316 Ill. App. 540, 45 N.E. 2d 577.

A prisoner's domicile would be that which he had immediately before confinement. The principle is stated in 28 C.J.S., Sec. 12, Note 7, as follows:

"Generally, a person's domicile is not changed by involuntary confinement in a penitentiary or other prison, but in such case his former domicile remains. Accordingly, a pauper prisoner retains his former settlement or domicile."

With the above principle and definition in mind, the determination of venue merely entails an application of the provisions of Section 473.010, supra, to the particular case involved. By way of illustration, the venue of the administration of the estate of a person whose domicile was in Greene County, Missouri, at the time of his confinement and whose death occurred while said party was incarcerated in Cole County, Missouri, would be in Greene County, Missouri, and not in Cole County, Missouri.

CONCLUSION

It is therefore the opinion of this office that: (1) the Warden of the Penitentiary is not authorized to deliver property of a deceased convict over to the family or relatives of said deceased convict; such delivery must be made pursuant to the laws of administration of estates; and (2) the venue is to

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be determined in each particular case as provided in Sec. 473.010, Cum. Supp. 1955.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Very truly yours,

John M. Dalton
Attorney General

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