

BANKS:  
TRUST COMPANIES:  
SAFE DEPOSIT COMPANIES:  
WAIVERS:  
INHERITANCE TAXES:

It is the opinion of this office that a bank or other institution included in Section 145.210, RSMo Supp. 1967, having custody of the will of a decedent shall deliver such will to the Probate Court

which has jurisdiction of the estate. No inheritance tax waiver is required to authorize such delivery.

Opinion No. 399

November 26, 1968

Honorable William Baxter Waters  
State Senator - 17th District  
First National Bank Building  
Liberty, Missouri



Dear Senator Waters:

We have received your letter of recent date requesting an opinion. Your request is as follows:

"Do you interpret Section 145.210 A.L. 1967, as providing that a bank may not deliver possession of a will of the deceased located in his safe deposit box without first obtaining the waiver mentioned in the section?"

We are enclosing a copy of Opinion No. 33, rendered March 17, 1954, to Mr. C. L. Gillilan which answers your opinion request. Such opinion holds on Page 5 that Section 145.210 is applicable only to the assets of the decedent. Section 145.210 quoted in such opinion was amended by Senate Bill 22 of the 74th General Assembly. However, we believe the construction placed on such section by Opinion No. 33 is applicable to the present section.

It is obvious that a will which provides for the disposition of the property of a decedent is not in itself an asset of a decedent. Since Section 145.210 applies only to assets of a decedent, there is no requirement that an inheritance tax waiver be obtained before a bank or other institution having in possession or control the will of a decedent makes delivery of such will.

Section 473.043, RSMo provides as follows:

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"After the death of a testator the person having custody of his will shall deliver it to the probate court which has jurisdiction of the estate. If the probate court is satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, the court may summon the person, and compel him, by attachment and commitment, to produce the same."

Section 472.010(24) applicable to the Probate Code provides as follows:

"'Person' includes natural persons and corporations."

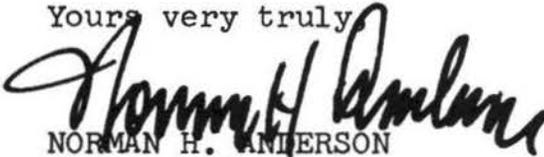
It appears therefore that corporations are included under the provisions of Section 473.043 and that banks and other corporations having custody of the wills of decedents are required to deliver such wills to the Probate Court having jurisdiction of the estate.

#### CONCLUSION

It is the opinion of this office that a bank or other institution included in Section 145.210, RSMo Supp. 1967, having custody of the will of a decedent shall deliver such will to the Probate Court which has jurisdiction of the estate. No inheritance tax waiver is required to authorize such delivery.

The foregoing opinion, which I hereby approve, was prepared by my assistant Daniel P. Hough, Jr.

Yours very truly

  
NORMAN H. ANDERSON  
Attorney General

Enc.  
Opinion No. 33  
3/17/54 - Gillilan