

March 10, 1971

Opinion Letter No. 158
Answered by Klaffenbach

Honorable Thomas A. Walsh
State Representative
52nd District
St. Louis, Missouri 63106



Dear Representative Walsh:

This letter is in response to your opinion request in which you ask the following question:

"A certain individual, while a resident of St. Louis County, died on January 7, 1970, and his will was admitted to probate in the Probate Court of St. Louis County, Missouri, and said estate remains open and undistributed.

"At the time of his death, the said individual owned a one-third share in a partnership whose office and place of business and tangible personal property owned by said partnership was then (at time of said partner's death) and is now in the City of St. Louis. His proportionate share in said partnership was listed and appraised by his Executor in the probate estate in St. Louis County. There are two surviving partners.

"The Department of Revenue of St. Louis County, Assessor's office, contends that it should assess, against the deceased partner's estate, personal property taxes for the year 1971 on decedent's one-third interest in the tangible personal property owed by said partnership even though entirely located in the City of St. Louis, Apparently, the Assessor relies on Section 137.090, R.S.Mo. 1969.

"In resisting such assessment, the Executor relies on Attorney General Opinion No. 15, CASLAVKA, 7-28-54, and Section 358.260, R.S.Mo. 1969 (a section of the Uniform Partnership Law).

"May the Assessor of St. Louis County lawfully make such an assessment for 1971 against decedent's estate, taking

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into consideration all the facts supplied herein?"

We have examined our Opinion No. 15, dated July 28, 1954, issued to the Honorable John R. Caslavke, and the opinion to which it refers, Opinion No. 57, dated March 10, 1950, issued to the Honorable W. V. Mayse, and, while we remain of the view that these opinions are correct, the Caslavka opinion was not based on the precise set of facts which you pose.

Section 137.090, R.S.Mo. 1969, states:

"All tangible personal property of whatever nature and character situate in a county other than the one in which the owner resides shall be assessed in the county where the owner resides, except that houseboats, cabin cruisers and automobile trailer houses used for lodging shall be assessed in the county where they are located and tangible personal property belonging to estates, which shall be assessed in the county in which the probate court has jurisdiction; provided, that no tangible personal property shall be simultaneously assessed in more than one county."

Section 358.310(4), R.S.Mo. 1969, provides that the death of any partner is a cause of dissolution of a partnership. Section 358.420, R.S.Mo. 1969, with respect to the estate of a deceased partner states:

"When any partner retires or dies, and the business is continued under any of the conditions set forth in subsections 1,2,3,4,5, and 6 of section 358.410, or subdivision (2) of subsection 2 of section 358.380 without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by subsection 8 of section 358.410."

We also note that Section 358.250 R.S.Mo. 1969 provides in part:

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"2. ... (4) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose."

Apparently from the facts set forth in your letter the value of the interest of the deceased partner in the partnership has not been ascertained pursuant to Section 358.420, but instead the partnership has been continued and his proportionate share, however determined, was listed and appraised by his executor in the probate estate in St. Louis County.

It is our view that if the decedent's interest in a partnership that is continued under Chapter 358, with respect to tangible personal property, remains partnership property the Caslavka opinion would be applicable.

Nevertheless we are also of the view that the question which you present concerns a live issue and an actual controversy and, as such, is not the proper subject of an opinion under Section 27.040, R.S.Mo. 1969, relative to the issuance of opinions by this office.

We conclude that, although we have expressed our views in a general fashion, we should not decide a controversy between private individuals and political subdivisions and for that reason must respectfully decline to determine the issues involved.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Opinion No. 15
7-28-54, Caslavka