

CONVICTS: Convicts while serving life sentence and dying while so incarcerated, leaving a personal estate within the county of their death, such personal estate shall be administered by the probate court of the county wherein the convict died.

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Mr. Elliott M. Dampf
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Mr. Dampf:

This will acknowledge receipt of your request for an opinion on the following set of facts:

"On April 1, 1936, Edwin M. Bode, Public Administrator of Cole County, Missouri, was appointed by the Probate Court of this County to take charge of the above estate and administer thereon according to law. A few days later the Probate Court of Jefferson County mailed a certified copy of letters of administration, appointing one Fred Oetjen, presumably a brother of the deceased convict, this certified copy of the letters bearing the date of the 3rd day of April, 1936, two days after the date of Mr. Bode's appointment.

"Mr. Bode went in person to the Frison Board, more especially to the Secretary and Treasurer and demanded the money, which amounts to something like \$286.15, but they refused to pay him the money and stated that Jefferson County was claiming the domicile of the deceased convict, Herman Oetjen, but the Jefferson County authorities, namely the Prosecuting Attorney, claims that Cole County's appointment should be withdrawn and that the money should be distributed to the creditors or qualified representative of that county.

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"The deceased convict was convicted and sentenced to life imprisonment. Of course, as you know we have a section of the Statutes that provides that the estate of a convict sentenced to life imprisonment may be administered upon as though he had died a natural death."

A search does not reveal wherein the courts of this state have passed upon the proposition, as outlined in the above set of facts and, accordingly, we look to the general proposition of law as laid down respecting the administration of estates of deceased persons, generally. In this respect, we direct your attention to 23 C. J. Page 1010, Section 34, wherein it is stated:

"The general rule is that the place of a decedent's last domicile determines the probate jurisdiction to grant letters and supervise the settlement of his estate, and the sole, or at least the principal, grant of letters ought to be taken out and the will proved in the country, the state, and indeed the very county where decedent was domiciled at the time of his death. * * *"

Then, again, at Page 1012, Section 36, it is stated:

"In some jurisdictions, where the deceased had no fixed residence within the state, jurisdiction over the administration of his estate is conferred upon the probate court of the county where he died, but such jurisdiction is usually given in the alternative, to such court or to the court of the county wherein the decedent's property or the greater part thereof is situated."

Section 37, on same page, reads:

"Locality of personal assets belonging to the estate of a decedent confers a local probate jurisdiction, regardless of the consideration of last domicile or residence, * * *"

Under the provisions of Section 4, of R. S. Missouri, 1929, it reads in part as follows:

"* * * *. If the deceased had no mansion house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. * * *"

Under the provisions of Section 12972 of R. S. Missouri, 1929, it reads as follows:

"Whenever any person shall be imprisoned in the penitentiary under a sentence of imprisonment for life, his estate, property and effects, shall be administered and disposed of, in all respects, as if he were naturally dead."

It is to be noticed, from the general principle above set forth, the jurisdiction is usually given to the court of the county wherein the decedent's property, or the greater part thereof, is situated and we necessarily assume that in view of the fact the deceased convict, above mentioned in the state of facts, died in Cole County and had \$286.15 upon his decease, that this was the greater part, if not all, of such convict's property.

The administration upon the estate of this convict, at the time of his sentence, could have been had under the provisions of Section 12972, supra, in the county from whence this party was sentenced to imprisonment for life. And, we again assume that had this convict any estate at the time of his sentence, his estate would have been administered in accordance with the section heretofore mentioned.

CONCLUSION

We do not intend, by our conclusion reached, to fix any hard and fast rule that would apply in every case where a convict died possessed of real or personal property. But, upon the above mentioned set of facts, we conclude that since the convict above mentioned had been sentenced to life imprisonment in the penitentiary, and subsequently died while incarcerated, leaving a personal estate, that letters of administration should have been taken out in the county wherein such convict died. And, in this particular instance, the

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the County of Cole would have been the proper county for the administration of the remaining estate.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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