INHERITANCE TAX: Age of majority of distributee fixed by the Law of the domicile of the ward.

June 9, 1933.

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Hon. D.F. Warren,
Judge of Probate Court,
County of Grundy,
Trenton, Missouri.

Dear Sir:

This department is in receipt of your letter of June 6, 1933, in which you request an official opinion from this office on the following proposition:

> "'A' died intestate in this county and state leaving nothing but personal property; administration in regular way. Among his heirs-at-law is a niece, a resident of Illinois, aged 20. Were she a resident of Missouri, a guardian would have to be appointed to receive her distributive share and receipt the Administrator. In Illinois, they say that a female is of age at 18 and demands her distributive share from the Administrator and contends she is qualified to receive and receipt for it.
>
> "Questinn, what should this Court order the Administrator to do to protect him?"

Section 374, R.S. Mo. 1929 provides:

> "All persons of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained, they shall be considered minors. (R.S. 1919, Sec. 370. Amended, Laws of 1921, p. 399.)"

Section 432, R.S. Mo. 1929 provides:

> "The court shall order payment of the amount found to be due, and the rendition of any effects, property rights or credits belonging to the ward, to such ward having attained majority, or to the successor of such guardian or curator, as the case may be, and enforce such order by attachment against the guardian or curator and his sureties. (R.S. 1919, Section 428)"

It is the opinion of this office that Section 374 only affects a ward domiciled in Missouri. As affecting a ward residing in another state, it would seem that the word "twenty-one" means "coming of age" under the laws of the state constituting the domicile of the ward.

It will be noticed that Section 432, R.S. Mo. 1929, says that payment shall be made "to such ward having attained majority."

In the case here under consideration, the heir-at-law is a resident of Illinois and has already attained her majority under the laws of that state.

In the case of Woodward v. Woodward, 11 S.W. 892 (Sup. Ct. of Tenn.), the court held that the guardian is not required to wait until the ward is twenty-one before settling with him as the ward "twenty-one", as used in the statutes is synonymous with "full age", and a minor domiciled in another state and emancipated by its laws from the disabilities of infancy may demand and receive personal property held for her by a guardian appointed and resident in Tennessee to which she is entitled as distributee of a decedent, as she will be gagarded "full age" in Tennessee for that purpose. The court said:

> "So that under our law he is required to settle when the ward is of full age, and, under the jus gentium, the petitioner is of full age and he must settle. The enforcement of this rule of private international law only requires that the common-law age of majority as fixed by the law of the domicile of the ward,

> unless there be something in our statutes or decisions which are to be understood as indicative of a policy or purpose to enforce the particular law, without regard to the rules of private international law which asks its suspension in favor of the Lex domicilli."

In the case of Memphis Trust Company v. Blessing, 58 S.W., l.c. 116, the court extended this rule to include real property; and, after quoting with approval the wording of the court in Woodward v. Woodward, supra, the court said:

> "We think this construction of our statutes conclusive of this case whether the property involved be realty or personalty. The statute was designed to fix a time for final settlement with wards in this State and has no application to wards who have arrived at full age by the law of their domicile. The court below so held and the decree is affirmed."

In the case of In Re Honeyman, 192 N.Y.S. 910, the court held that a resident of full age--18 years--in the State of Illinois is entitled to a decree revoking letters of her guardianship in the State of New York under the laws of which she is a minor until reaching the age of 21 years, and requiring the guardian to account for and pay over to her forthwith her property in this State. The court said:

> "I am of the opinion that the petitioner, as a resident of, and of full age, in the State of Illinois is entitled to her property in New York. It is her property. Possession is an incident of a right of property. In my opinion to withhold from the petitioner her property in New York is a clear violation of the property rights of a resident of another state and the constitutional provision guaranteeing property rights. Likewise, it would be a violation of the comity which exists between the states."

In the rather recent case of In Re Golding's Estate, 216 N.Y.S. 593, the court held:

> "Mabel Golding, testator's daughter, has been a resident of the State of Illinois since prior to the death of testator, and attained the age of 18 years on January 28, 1922. The laws of that state provide that an infant attains her majority at the age of 18 years. She is therefore competent to administer her own estate. The decree should provide that payment of her distributive share of the estate be made to her direct. Matter of Honeyman, 117 Misc. Rep. 653, 192 N.Y.S. 910, affirmed 202 App. Div. 728, 193 N.Y.S. 936; Matter of Danvers, Law Journal, April 10, 1923."

In conclusion therefore it is the opinion of this office that the heir-at-law, residing in Illinois and having reached the age of twenty years, is qualified under the laws of that state to receive and receipt for her distributive share of the estate.

Respectfully submitted,

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Assistant Attorney General.

JWH:AJ