

ADMINISTRATION: Estates of persons presumed to be dead must be administered according to the terms of the statutes.

May 4, 1937

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

ATTENTION: John Graves

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"The question for determination is whether or not Alvina Zacheis and her sister can rightfully claim the part of the Louis Zacheis estate due the brother of said Louis Zacheis, to-wit, Arthur Zacheis who disappeared in 1904 and has not been seen or heard of since that time, without having the said Arthur Zacheis declared legally dead under the seven year statute."

Appended to your request for an opinion is a copy of a letter received from Frank C. Boland, an Attorney at Law, of St. Louis, Missouri, which reads as follows:

"Arthur Zacheis disappeared during the Worlds' Fair in St. Louis and has not been seen or heard from since 1904. His share of Louis Zacheis's estate amounts to

\$476.13 and the only living relatives are Alvina Zacheis and her sister and rather than go to the expense of taking out letters of administration and having Arthur Azcheis declared civilly dead the sisters are asking you under the circumstances if there is any way in which they can obtain this money without incurring any expense whatsoever."

An examination of our statutes reveal that the legislature has provided a complete scheme for the granting of letters of administration upon estates of persons presumed to be dead, by reason of their absence from the place of their last known domicile within this state.

Section 265 of R. S. Missouri 1929, relating to the granting of letters upon the estate of a person presumed to be dead, reads as follows:

"Whenever application shall be made to any probate court, or judge thereof in vacation, for letters of administration upon the estate of any person supposed to be dead, because of the absence of such person for seven consecutive years from the place of his last known domicile within this state, or because, having been a resident of this state, such person has heretofore gone from and has not returned to this state for seven consecutive years, or, because having been such resident of this state, such person shall hereafter go, from and shall not return to

this state for seven consecutive years, or, because being a resident of this state, such person shall have so concealed or conducted himself within this state that he shall not have been heard of for seven consecutive years by the judge of the probate court having jurisdiction of his estate, or by the persons interested therein, then said probate court, or the judge thereof in vacation, if satisfied that the applicant would be entitled to such letters if the supposed decedent were in fact dead, shall cause a notice to such supposed deceased person to be published in a newspaper, published in the county, once a week for four consecutive weeks, setting forth the fact that such application has been made, together with notice that on a day certain, which shall be at least two weeks after the last publication of such notice, the court will hear evidence concerning the alleged absence of the supposed decedent, and the circumstances and duration thereof. The persons applying for such letters of administration shall file a petition, verified by affidavit, stating the facts upon which such application is based and the place where such supposed deceased person resided when last heard from by him--by any person within his knowledge."

Briefly, other sections of the statutes provide in substance and effect as to who may testify at the hearing for the purpose of declaring one legally dead; publications of the finding of the court; requirement of the alleged decedent, if alive, or any other person for him to produce in court within twelve weeks from the date of the last date of publication satisfactory evidence that he is alive; when within the period of twelve weeks evidence shall not be offered to the Probate Court that the alleged decedent is in fact still living, letters may issue; letters being revoked upon proof that the alleged decedent is alive; of the distribution of the estate of any alleged decedent upon the giving of a refunding bond by persons who are to receive the estate of such decedent; of the alleged decedent being substituted for the administrator should alleged decedent subsequently appear and the payment of costs. Sections 266 to 272 of R. S. Missouri 1929.

In the case of Vaughn vs. Cadwell, 279 S. W. 170, l. c. 171, the court, in discussing the statutes relating to the declaring of a person legally dead said:

"It was only by reason of statutory enactment that administration could be had upon plaintiff's estate, due to the presumption of death after an absence of seven years, and the statutes must be strictly complied with."

In the case of Cunniss vs. Reading School District, 198 U. S. 458 l. c. 470, the Supreme Court of the United States had before it for consideration statutes concerning the declaring of a person legally dead within the State of Pennsylvania, from which it appears our statutes are patterned. In this case the court aptly discusses the reason for the necessity of this type of legislation. The court said:

"Three characters of interest invoke a necessity for legislation concerning this difficult and important subject."

First. The interest of the person himself who has disappeared. If it is true that generally speaking every person is held at his own peril to watch over his own property, nevertheless the law owes a duty to protect those who from incapacity are unable to direct their affairs. It is upon this principle of public order that the appointment of tutors to minors or curators to the insane rests. It is indeed natural to presume that a person who has disappeared, if he continues to exist, is prevented from returning by some obstacle stronger than his own will, and which, therefore, places him in the category of an incapable person, whose interest it is the duty of the law to protect. And it is for this reason that the provisions as to absence in the code are placed in the chapter treating of the status of persons because the absentee, in the legal sense, is a person occupying a peculiar legal status. Second. The duty of the lawmaker to consider the rights of third parties against the absentee, especially those who have rights which would depend upon the death of the absentee. Third. Finally, the general interest of society which may require that property does not remain abandoned without some one representing it and without an owner. . . ."

CONCLUSION

Hon. Forrest Smith

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In view of the above it is our opinion that the estate of Arthur Eacheis must be administered in accordance with the terms of the statutes relating to the administering of estates of persons presumed to be dead.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:JMW