

ADMINISTRATION: Section 301, Laws of Missouri 1941, is procedural in character and becomes effective ninety days after the adjournment of the Legislature.

November 29, 1941.

12-2

Mr. S. F. Wier
Judge of the Probate Court
Atchison County
Rockport, Missouri



Dear Sir:

We are in receipt of your letter of November 15th wherein you request the opinion of this department on the following statement of facts:

"As Probate Judge of Atchison County I desire your opinion upon the following facts with reference to the hereinafter mentioned statute:

"Prior to the general election of 1940 one Clark H. Gore was public administrator of Atchison County. At said general election Mrs. George Deatz was elected to that office. She duly qualified as such public administrator on December 6, 1940. After said qualification of his successor, Mr. Gore continued in charge of the estates he had been handling as public administrator under section 301, R. S. Missouri, 1939.

"The late General Assembly repealed said section 301 and passed in lieu thereof another section relating to public administrators which will be found in Laws of Missouri, 1941, page 286. By said new act, public administrators shall, before the first day of the regular term of the Probate Court, after the expiration of one year after their successors in office shall have qualified, publish notice of final settlement for all estates in their charge as public administrator in which final settlement can be made during that term of court. Upon the first day of said term the

Probate Judge, on his own motion, shall order the public administrator to account for and deliver all money, property and papers belonging to estates in his hands in which such final settlement cannot be made during that term of court, to his successor in office.

"Said act of 1941, not being passed with an emergency clause, went into effect on October 10, 1941.

"As Mr. Gore's successor qualified on December 6, 1940, the year mentioned in said new section 301 would expire on December 6, 1941.

"Does this new section 301 apply to Mr. Gore, so that he must publish notice of final settlement as in said section mentioned? The first term of court at which said settlement could be made would be my February, 1942, term.

"In my opinion said act of 1941 does apply, and it is Mr. Gore's duty to give proper notice of final settlement in all estates he had theretofore held as public administrator, and my duty under said new section 301 to make the order required therein at the proper time.

"Please give me your opinion in the matter."

Section 301, Laws of Missouri 1941, page 286, reads as follows:

"The public administrator shall before the first day of the regular term of the probate court after the expiration of one year after his successor in office shall have qualified, publish notice of final settlement as is provided in Section 229, of the Revised Statutes of Missouri, 1939, for all estates in his charge as public administrator in which final settlement can be made during that term of court. Upon the first day of said term, the Probate Judge shall upon his own motion, order the public administrator to account for and deliver all money, property or papers belonging to all

estates in his hands in which final settlement can not be made during that term of court, to his successor in office, or to the heirs of said estate, or to any executor or administrator regularly appointed, as provided by law, and such accounting and delivery shall be accomplished during that term of court. Provided that when the Public Administrator shall turn over the assets of an estate to his successor in office, or to any other executor or administrator regularly appointed as is provided by law, and before any final distribution has been made of the assets of the estate, the Probate Judge shall allow him compensation based on the proportionate part of the services and trouble rendered for the period of time such Public Administrator actually served as such administrator, and provided that such compensation for services rendered by both the original and succeeding administrator who shall complete the work of such administration shall not exceed a commission of five per cent on personal property and all money arising from the sale of real estate."

Section 301, R. S. Mo. 1939, was repealed by the aforesaid section and reads as follows:

"When a public administrator has been appointed to take charge of an estate, he shall continue the administration until finally settled, unless he resigns, dies, is removed for cause, or is discharged in the ordinary course of law as the administrator."

We call attention to the case of *McManus v. Park*, 287 Mo. 115, and we herewith quote from the opinion as follows:

"The appellant contends that the Act of 1911 should be construed so as to apply only to trust estates created after the enactment of that law; that otherwise it would be unconstitutional, * * * * *

"This argument proceeds upon the theory that if it is made to apply to existing trusts and trustees it is retrospective in operation. * * *

"This court said in case of Mainwaring v. Lumber Co., 200 Mo. l. c. 732-733:

'Acts changing remedies in any way that do not destroy or impair vested rights, are excluded from the rule invalidating retrospective laws, even when they are intended to retroact.' * * * * *

"* * * There is no vested right in a particular mode of procedure.' * * * * *

"In the Abbott Mining Company case, 255 Mo. l. c. 384, this court, Division One said:

'A vested right in the sense in which the term was used in the foregoing quotation is a property interest in the thing itself whether it exist in contract or possession; and it is subject to whatever burden may be imposed by the State for the general welfare; that is to say, for the enforcement and protection of the rights of all. Laws providing and regulating remedies for the protection and enforcement of legal rights are peculiarly within this rule.' * * * * *

"* * * Such trustee has no vested right in the manner of accounting for his trust. The statute may be construed to affect trust estates and trustees created before its passage without being contrary to the section of the Constitution. * * * * *

"* * * In this country, the general rule seems to be, in accordance with the English, that statutes pertaining to the remedy, i. e., such as relate to the course and form of proceedings for the enforcement of a right, but do not affect the substance of the judgment pronounced, and neither directly nor indirectly destroy all remedy whatever for the enforcement of the right, are retrospective, so as to apply to causes of action subsisting at the date of their passage.' And further quoting from the same author: 'It is said that an act dealing

with procedure only applies unless the contrary intention is expressed, to all actions falling within its terms whether commenced before or after the enactment.' * * * * *

"It has been held by this court that where the terms of an act are ambiguous recourse may be had to the title in ascertaining the intention of the Legislature. (Straughan v. Meyers, 268 Mo. 1. c. 588.) * * * * *

"We think that a construction of the statute under consideration so as to make it apply to trustees appointed as well as trust estates created, before and after the passage of the act, would meet the evident intention of the Legislature, and not do violence to the plain meaning of the language used. * * * * *"

From the reading of the McManus case, supra, we find that the court has logically reasoned that a statute which is procedural in character becomes the law of the case when said statute becomes effective which is ninety days after the adjournment of the Legislature. State vs. Schenk, 142 S. W. 263, 238 Mo. 429.

The policy of the law as set forth clearly in the McManus case has been adhered to uniformly in Missouri, and for other citations we quote as follows: State vs. Haid, 52 S. W. (2d), 183 1. c. 186.

"* * * It is a well-settled rule that, if before final decision in a case a new statute as to procedure goes into effect, it must from that time govern and regulate the proceedings. Clark v. Railroad, 219 Mo. 524, 118 S. W. 40. And a like result is produced by a change in the construction of a statute relating to procedure by a court of last resort. * * *"

State vs. Producers R. R. Company, 111 S. W. (2d) 521, 1. c. 525, Aetna Ins. Co. vs. O'Malley, 118 S. W. (2d) 3, 1. c. 8, 59 C. J. paragraph 702, page 1176.

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From the reading of the aforesaid cases, supra, we must conclude that Section 301, Laws of Missouri 1941, is a procedural statute and that on the termination of ninety days after the adjournment of the Legislature said law became effective, and is therefore incumbent upon the public administrator referred to in your opinion request, to comply with said new Section 301, supra, and to publish notice of final settlement as is provided in Section 229, R. S. Mo. 1939.

CONCLUSION

We are of the opinion that Section 301, Laws of Mo. 1941, is procedural in character and therefore took effect ninety days after the adjournment of the Legislature and immediately became effective upon all public administrators, and said public administrator shall before the first day of the regular term of the Probate Court "after the expiration of one year after his successor in office shall have qualified, publish notice of final settlement as is provided in Section 229, R. S. Mo. 1939."

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General *

APPROVED:

VANE C. THURLO
(Acting) Attorney General

BRC:LB