

ADMINISTRATION: Creditor of deceased person may make application for refusal of letters of administration when the amount of deceased's estate does not exceed \$100.00.

June 24, 1942

6-75



Mr. Ira A. Jones, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jones:

Your letter of June 22, 1942, requesting an opinion from this office has been assigned to me. Your letter, omitting caption and signature, reads as follows:

"At the State School at Marshall, Missouri, we had an employee named Oscar Trower, who became sick on the night of May 30th and died on May 31st. His check for the month of May, dated June 1st, reached the School a few days later. Undoubtedly the man earned his full month's salary for May. He seems to have no immediate relatives, and the undertaker wants the Steward to turn this \$45.00 check over to him. We see no way this can be done without a court order. The undertaker says the Probate Court has given him an order refusing administration.

"Just what is our procedure?"

For the purposes of this opinion we are assuming that there are not any other debts of the decedent except that of the undertaker and that there are no immediate relatives, as you stated, claiming the check which was the property of Oscar Trower.

In dealing with matters of this kind Section 2 of House Bill 465 of the Laws of Missouri, 1941, at page 289, provides as follows:

"Letters Not Granted--When--The Probate court, or judge thereof in vacation, in its or his discretion, may refuse to grant letters of administration in the following cases: first, when the estate of the deceased is not greater in amount than is allowed by law as the absolute property of the widower, widow or minor children under the age of eighteen years: second, when the estate of the deceased does not exceed one hundred (\$100.00) dollars and there is no widower, widow or children under the age of eighteen years, any creditor of the estate may apply for refusal of letters by giving bond in the sum of one hundred (\$100.00) dollars, said bond to be approved by the probate court or judge thereof in vacation, conditioned upon such creditor obligating himself to pay, so far as the assets of the estate will permit, the debts of the deceased in the order of their preference. Proof may be allowed by or on behalf of such widower, widow, minor children or creditor before the probate court or judge thereof of the value and nature of such estate, and if such court or judge shall be satisfied that no estate will be left after allowing to the widower, widow or minor children their absolute property, or that the estate does not exceed one hundred (\$100.00) dollars when application is made by a creditor, the court or judge may order that no letters of administration shall be issued on such estate, unless, upon the application of other creditors or parties interested, the existence of other or further property be shown. And after the making of such order, and until such time as the same may be revoked, such widower, widow, minor

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children or creditor shall be authorized to collect and sue for all the property belonging to such estate; if a widower, widow or creditor, in the same manner and with the same effect as if he or she had been appointed and qualified as executor or executrix of such estate; if minor children under the age of eighteen years, in the same manner and with the same effect as now provided by law for proceedings in court by infants in bringing suit; provided also, that the widower, widow or minor children under the age of eighteen years may retain the property belonging to such estate and the creditor shall apply the proceeds thereof to debts of the estate in the order in which demands against the estate of deceased persons are now classified and preferred by law. Provided further, that any person who has paid the funeral expenses or other debts of deceased shall be deemed a creditor for the purpose of making application for the refusal of letters of administration under this section and be subrogated to the rights of such original creditor."

As can be seen from the above section, where a person dies leaving no widow or minor children under the age of eighteen, any person who has paid the funeral expenses of the decedent may make application for the refusal of letters of administration. There is a further provision that if a person makes such application that before the refusal of the letters of administration is made it is necessary that the creditor give bond in the sum of One Hundred Dollars where the estate of the decedent does not exceed that amount.

From your letter it appears that the only estate that the deceased, Oscar Trower, had was a Forty-five Dollar check payable to him from the State. If the creditor or undertaker has made application for the refusal of letters

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of administration and in conformity to the statute has posted a bond in the sum of One Hundred Dollars and the court has granted a refusal of letters of administration to him, it is our opinion that the check in the amount of Forty-five Dollars should be turned over to such undertaker or creditor. Further, we feel that the order of the Probate Court granting a refusal of letters of administration is a "court order" and that the steward is authorized under such court order to turn the Forty-five Dollar check over to the said undertaker or creditor.

Conclusion

It is the conclusion of this Department that any creditor who obtains a refusal of letters of administration in an estate not exceeding One Hundred Dollars and who posts a bond in the amount of One Hundred Dollars, is entitled to the assets of the decedent's estate where there is no widow or minor children under the age of eighteen years.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG