

PUBLIC ADMINISTRATORS: Section 301, Laws of Missouri, 1941,
page 286, is constitutional.

March 17, 1942

3-27

Hon. Conn Withers
Prosecuting Attorney
Liberty, Missouri



Dear Mr. Withers:

We are in receipt of your letter of recent date wherein you request an opinion from this department based on the following statement of facts:

"The question has been raised concerning the duty of the Public Administrator of Clay County, Missouri, whose term expired December 31, 1940, to make final settlement and turn over assets on estates in his hands which were received by him as such Public Administrator to his successor, the present Public Administrator of said County.

"The former Public Administrator has been advised that the Act of the 1941 Legislature relating to this subject is void and unconstitutional.

"I enclose a copy of the opinion rendered by Lawson & Hale, Attorneys at Law, to the former Public Administrator, expressing the foregoing view.

"I make no personal expression concerning the correctness of the conclusion reached in the opinion enclosed, but merely supply it so you may see the question raised and the position taken by the former Administrator insofar as this may assist your Department in its research on this question.

"Will you please advise whether or not, in your opinion, considering the Acts of the 1941 Legislature of Missouri, the former Administrator is required to make such final settlement and turn over such assets in estates of which he took charge as Public Administrator to his successor.

We are enclosing herewith two opinions which have been heretofore rendered by this department construing Section 301, Laws of Missouri 1941, namely, one to Hon. S. F. Weir, Judge of the Probate Court, Atchison County, Rockport, Missouri, and one to Hon. R. F. Sevier, Judge of the Probate Court, Liberty, Missouri. It is our view that the two previous opinions answer all questions of those presented by your opinion request with the exception of the one touching the constitutionality of Section 301, supra. We therefore limit this opinion to the question, "Is Section 301, page 286, Laws of Missouri, 1941, constitutional?"

Section 301, supra, provides 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."

In the case of *Witzmann v. The S. Ry. Co.*, 131 Mo. 612, 1. cl 618, the court said:

"Adjudicated cases do not, as a general rule, afford us much assistance in passing upon questions of this character, other than in a general way, as each case must be adjudged according to its own peculiar facts and the directness or remoteness, as the case may be, of its provisions to matters in consonance with its title. * * * * *"

In the case of *State v. Davis*, 284 S. W. 465, 1. c. 470, the court had this to say:

"Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. The endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature, or to discover how the policy of the Legislature with reference to the subject-matter has been changed or modified from time to time. With this purpose in view therefore it is proper to consider,

not only acts passed at the same session of the Legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed. * *"

In tracing the history of this section, we find that it was first enacted in substance in 1857, and we herewith copy verbatim the original section, Section 1, together with its title:

"ADMINISTRATORS. AN ACT concerning Public Administrators.

* * * * *

Be it enacted by the General Assembly of the State of Missouri, as follows:

"Sec. 1. That every Public Administrator in this State, as well the present incumbents as their successors in office, shall, at the expiration of the term for which he shall have been appointed or elected, continue to have charge of any estate of which he shall have commenced the administration, until such estate shall have been fully administered, or he shall be discharged in the ordinary course of law, as other administrators; Provided, however, That this section of this act, so far as it applies to the county of St. Louis, shall be so limited as to require the Public Administrator of said county, within one year from the time his successor in office shall be elected and qualified, to turn over to such successor all estates and property in his hands, as such Public Administrator, which he shall not, within said year, have finally settled. * * * * *

This section, supra, was retained in our statutes verbatim until the General Statutes of 1865, (See G. S. 1865, page 516, Section 12.)

In the revision of the Statutes in 1879, the original section was somewhat changed. We therefore copy Section 309, page 46, Laws of Missouri 1879, which reads as follows:

"To continue in charge of estates after end of term. -- Every public administrator in this state shall, at the expiration of the term for which he shall have been appointed or elected, continue to have charge of any estate of which he shall have commenced the administration, until such estate shall be fully administered, or he shall be discharged in the ordinary course of law as other administrators. (G. S. 516, Sec. 12, amended.)"

When the statutes of 1889 were revised, the 1879 section was reworded and designated Section 301, page 175, R. S. Mo. 1889, and reads as follows:

"To continue in charge of estates until discharge of estates until discharged, etc. -- 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. (R. S. 1879, Sec. 309, amended.)

This wording was retained until the repeal and reenactment of Section 301, page 286, Laws of Missouri, 1941, supra.

In the case of *State ex rel Mueller Packing Co. v. Calvird*, 92 S. W. (2d) 184, 1. c. 188, the court said:

"As the above-quoted title to the act of 1913 clearly stated, that act repealed article 1, chapter 98, R. S. Mo. 1909, and enacted the new article in lieu thereof. Under those circumstances, this court held in *Sherrill v. Brantley*, 334 Mo. 497, loc. cit. 502, 66 S. W. (2d) 529, 530, that: 'The title of the original act became thereby the title of the later law and the constitutionality of the substituted section

is to be determined upon whether it comes properly within the purview of this title. State ex rel. v. Gideon, 277 Mo. 356, 210 S. W. 353.'

"Article 1, chapter 98, R. S. 1909, was enacted in 1907. It contained a comprehensive title. Laws Mo. 1907, p. 377. Section 8972 thereof (Laws Mo. 1907, p. 380) is exactly the same as the present section 8707. No suggestion is made nor can be logically made that section 8707 does not properly come within the purview of the title of the act of 1907."

At the outset, we wish to make the observation that if the legislature had not seen fit to have enacted Section 1, Laws of Missouri 1857, and to have retained sections of similar import and substance to the present time, then a public administrator, would be legally bound, in his official capacity, to make a turn over settlement in all estates in his hands immediately after the expiration of the last day of his statutory term, and upon the order and approval of the court, if he was elected through the force of a section similar to Section 295, R. S. Mo., 1939. Consequently, Section 1 of the Laws of 1857, and subsequent sections of similar import and substance have no doubt been considered invaluable in completing the administration of estates.

We wish also to point out that the marked difference between Section 301, Laws of Missouri 1941, and the preceding sections, is that Section 301 accelerates the administration of estates.

We further wish to point out that Section 301 also provides for the compensation of the public administrator on those estates which he must turn over. If this provision were not in Section 301, or was unconstitutional, then it is our view that Section 298, R. S. Mo. 1939, would apply.

In the brief attached to the opinion request, we note that it is the position of the attorneys that Section 301 violates Section 28, Article 4 of the Constitution of Missouri, for the reason that the title to the section does not clearly express the subject of the act.

In the case of State v. Danuser, 6 S. W. (2d) 907, 1. c. 909, the court said:

"The state Constitution (section 28, art. 4), is read to little purpose if it be held to require that the title of an act must present the particularity of an itemized account or to minutiae of a chemical analysis. When the Constitution provides, therefore, that "no bill * * * shall contain more than one subject which shall be clearly expressed in its title," it simply means that the title shall indicate in an unmistakable manner the general contents of the act; it does not require, nor was it intended that it should descend into particulars, but that it will be sufficient if it defines the nature of the statute and thus informs the reader as to its purpose. The nature of this constitutional provision being thus understood, the tendency of the courts in numerous rulings has been to construe it liberally in aid of all well directed legislative power."

"An apposite ruling, which fits like a glove the facts in the instant case, is that of State v. Mullinix, 301 Mo. 385, 390, 257 S. W. 121, 123, in which the court said:

"The generality of a title will not affect its validity where it does not tend to cover up or obscure legislation which is in itself incongruous. A requisite to congruity is that the amendatory act shall pertain to and admit of being made a consistent part of the law to be amended. The disposition of the courts has always been to avoid thwarting the efficiency or evident salutary effect of legislative action by a liberal interpretation of the constitutional provision (Burge v. R. R., 244 Mo. 76, 148 S. W. 925; Booth v. Scott, 276 Mo. 1, 205 S. W. 633)."

The court, in the case of Sherrill v. Brantley, 66 S. W. (2d) 529, 1. c. 532, said:

"The purpose of a title is to serve as a clear and comprehensive indicator of the purport of the act. While it may be so general in its terms as to omit reference to or the expression of matters germane to the principal features of the statute, if it sufficiently indicates the substantial purpose of the law, it will not be violative of the Constitution; but where a title descends to particulars and specifies a certain class included within the provisions of the act, to the exclusion of others, it does not sufficiently indicate the purport of the law, and is to that extent violative of the constitutional provision."

And, in the case of *Graves v. Purcell*, 85 S. W. (2d) 543, 1. c. 549, the court said:

"* * * There is a presumption that the statute here assailed is constitutional. The burden rests upon the party questioning the constitutional validity of a statute to establish its unconstitutionality beyond a reasonable doubt, and if its constitutionality remains in doubt, such doubt must be resolved in favor of its validity. * * *"

The wording of the title to Section 301, Laws of Missouri, 1941, reads as follows:

"ADMINISTRATION: Relating to term of office of public administrators. AN ACT to repeal Section 301, Article 13, Chapter 1 of the Revised Statutes of Missouri, 1939, and to enact in lieu thereof a new section relating to the term of office of public administrators."

It is our view that the wording of the title of the act clearly advises one that the section of which it is a part has something to do with the term of office of a public administrator and we are mindful of the cases set forth in the brief and the view taken by the attorneys that the word "term" as

used in the title would indicate a section similar to Section 295, supra, but in construing titles to sections we must give the words of the act a liberal construction, with the view of sustaining the presumption of constitutionality, as distinguished from a restricted construction.

We wish to point out that regardless of the presumption of constitutionality that attends the wording of the title of an act, the wording of the title of Section 301, Laws of Missouri 1941, wherein it reads in part, "An Act to Repeal 301, Article 13, Chapter 1 of the Revised Statutes of Missouri 1939," would immediately and clearly advise one that the section of the statutes which gave a public administrator the right to administer until final settlement of all estates coming into his hands, was to be repealed, and this right taken away from him. Then he is met with the wording "and to enact in lieu thereof a new section." We think this wording would immediately advise a person that the new section was certainly to take the place in some measure of Section 301 that was repealed, and when he is met with the further wording "relating to the term of office of public administrator", he would certainly be advised that that wording had to do with the term of office of public administrator as defined in Section 301, Article 13, Chapter 1, R. S. Mo. 1939.

We think that this is undoubtedly a fair observation to be made of one merely reading the title of the act, and when we turn to Section 301, of which the above is the title thereto, we find that the wording down to the word "provided" is only different from Section 301, R. S. Mo. 1939, in that it casts the duty upon the public administrator to make a turn over settlement in all estates in his hands in which he cannot make final settlement at the regular term of the probate court after the expiration of one year after his successor in office shall have been qualified. Even under Section 301, R. S. Mo. 1939, it would be his duty to make a settlement in all of these cases, the difference being that under Section 301, R. S. Mo. 1939, he would retain the remaining estates, whereas, under Section 301, Laws of Missouri, 1941, he must turn them over to his successor.

Hon. Conn Withers

-10-

March 17, 1942

CONCLUSION

It is our view that when the rules of construction are applied to Section 301, Laws of Missouri 1941, the title to said act does not deceive one as to the contents of the ensuing section and therefore must be held to be constitutional.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

BRC : NS