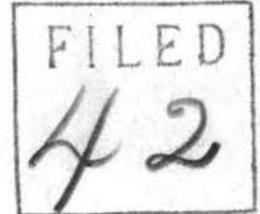


BLIND PENSIONS: Construing Section 9457, page 1350, Laws of Missouri, 1945, relative to the payment of accrued unpaid balance upon the death of a recipient, to the legal representatives of such pensioner.

May 29, 1948



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Department of Revenue
State of Missouri
Jefferson City, Missouri

Attention: Mr. B. H. Howard
Comptroller

Gentlemen:

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

"Laws of 1945, Section 9457, Page 1350 provides in part that 'in case any pensioner shall die, having an accrued unpaid pension, the amount thereof shall be paid to the legal representatives of such pensioner'. This part of the section was copied from the Revised Statutes of 1939 and we presume that it has been in effect for many years.

"In most cases the pensioner has little or no estate other than the small amount of the pension which has accrued to him during the month of his death. It has been the practice in the past to furnish a member of the pensioner's family with a copy of the enclosed form and have someone appointed legal representative by the probate judge. In a recent case Judge Herbert Taylor, Probate Judge of Christian County, has raised the question as to his authority to appoint a legal representative to receive the accrued pension. In this case the person who wished to be appointed is the son of the pensioner and is not a minor.

"We will appreciate an opinion as to the proper procedure to be followed in order for the son to collect the accrued pension."

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Section 9457, page 1350, Laws of Missouri, 1945, provides that if any pensioner shall die, having an accrued unpaid balance, the amount thereof shall be paid to the legal representatives of such pensioner. The Act does not again refer to who shall be the legal representative, or how same shall be appointed. Said Section reads:

"Section 9457. Comptroller to supply quarterly requisitions to be filed by applicants for pensions.-- The comptroller shall supply to all persons appearing upon the blind pension roll, suitable blank forms for monthly requisitions for pensions, containing, among other things, a statement that requisitioner is the recipient of the pension personally and that he or she has the free and full use of such pension, and that the same is devoted exclusively to his or her needs, giving present address; and each pensioner shall forward each requisition for pension last accrued to the comptroller who shall certify the claim to the state auditor who shall draw his warrant in favor of such pensioner upon the state treasurer for any moneys in the treasury available therefor and forward same to pensioner or the legal guardian thereof at such postoffice address: Provided, that where such pensioner is under legal guardianship, such requisition may be made by the guardian; and in case any pensioner shall die, having any accrued and unpaid pension, the amount thereof shall be paid to the legal representatives of such pensioner; and in case any pensioner should abandon his or her residence in this state, having an accrued and unpaid pension, upon requisition, as herein provided, such unpaid amount shall be forwarded to the address of such pensioner or the legal guardian thereof."

The legal representative has been defined often depending upon the particular manner in which the words are used. In this instance, since the Blind Pension Law itself does not establish any particular procedure which may prevent the estate of a blind pension recipient from being administered in the Probate Courts of this State,

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we believe the laws dealing with the administration of estates in the Probate Court should be construed along with Section 9457, supra, relative to the payment of any accrued unpaid balance to the legal representatives of such pensioner. Especially should these laws be construed together, in view of the fact that it is necessary before anyone be placed upon the blind pension roll that he file an application with the representative of the Commission, or the Probate Court. (See: Section 9454, R.S. Mo. 1939).

In the absence of a deceased recipient leaving a will, the Probate Court is authorized to grant letters of administration appointing an administrator in said estate. However, in certain instances, this procedure is optional with the Probate Court. Section 2, page 289, Laws of Missouri, 1941, prescribes the condition and circumstances when a Probate Court may refuse to grant letters of administration. Said Section reads:

"Section 2. Letters Not Granted--When.--
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

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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 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."

It will be noticed that the Legislature in enacting Section 2, supra, provided that the Probate Court in its or his discretion may refuse letters of administration in certain cases, by the use of the word "may" preceded by the words "in its or his discretion" referring to the Probate Court, we are of the opinion under well established rules of statutory construction, that it is discretionary

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with the Probate Court whether said Court refuses to grant letters of administration in such cases or does grant letters of administration. If the Legislature had used the word "shall" instead of "may", and had not specifically left the matter to the discretion of the Probate Court, there would be no question but that it was a mandate to said Court to refuse to grant letters of administration in certain instances. (State ex rel. Coleman vs. Blair, 151 S.W. 148, l.c. 151, 245 Mo. 680; also see: Lansdown vs. Paris, 66 Fed. (2d) 939, l.c. 941).

In Ordelheide vs. Modern Brotherhood of America, 158 Mo. App. 677, l.c. 685, an action was brought by an administrator to recover the amount, with interest, of what plaintiff called a life insurance policy and the defendant called a benefit certificate issued by a fraternal benefit society, for \$1,000.00. The policy or certificate was issued to plaintiff's intestate, and was payable to his "legal representatives related to the members as---" The Court held that the words "legal representatives" must mean executors or administrators, and in so holding, said:

"We are not impressed by the suggestion that the designation 'legal representatives' must be construed to mean, not the executor or administrator of the insured, but some one of the classes authorized by our statute. The words 'legal representatives' must be construed to mean 'executors or administrators,' in the absence of anything showing a different intent. (New York Life Ins. Co. v. Kansas City Bank, 121 Mo. App. 479, 97 SW 195; Walker v. Peters, 139 Mo. App. 681, 124 S.W. 35.) Here, there is a total absence of anything showing such different intent. There is not even a suggestion that the insured had any family, heirs, blood relatives, affianced wife, or dependents. There is nothing disclosed concerning him, except that he was a young man twenty-two years of age. The only expression disclosed of his desire in the premises is contained in the application to the effect that the beneficiary should be his 'legal representatives.' The omission to strike out from the certificate

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the words 'related to the insured as . . .' can hardly be considered an expression of an intention that the 'legal representatives' should be related to the insured in some one of the authorized classes. It is plain that these words and blank were part of the printed form and were left unerased through mere inadvertance. This is altogether too meagre a circumstance, if any at all, to justify an interpretation avoiding a contract which should be liberally interpreted in favor of the insured."

In *Thompson vs. United States*, 20 Ct. Cl. 276, l.c. 278, the Court also held that the words "legal representatives" in the absence of anything appearing in the context of the Act must be held to mean administrators or executors, and said:

"The ordinary meaning of the words 'representative,' 'legal representative,' 'personal representative,' is, that they refer to the person constituted representative by the proper court, and the onus is upon those attempting to maintain a different construction to show a different meaning. (2 *Jarman on Wills*, 120; *Holloway v. Clarkson*, 2 *Hare*, 523; 118 *Mass.*, 198; *Bouvier Law Dictionary*, vol. 2, 410-576.)

"In the absence of anything appearing in the context, those words found in a statute or written instrument must be held as meaning the administrator or executor. * * *".

Also, *Thompson vs. Smith*, 103 F. (2d) 936, l.c. 938, 70 App. D.C. 65, 123 A.L.R. 76, wherein the Court said:

"The statute is not lacking in clarity. The phrase 'legal representatives' has an accepted meaning which includes 'executor.' See *Briggs v. Walker*, 1898, 171 U.S. 466, 19 S. Ct. 1, 43 L. Ed. 243. In that case the Supreme Court said, at

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page 471, 19 S. Ct. at page 3: 'The primary and ordinary meaning of the words "representatives," or "legal representatives," or "personal representatives," when there is nothing in the context to control their meaning, is "executors or administrators," they being the representatives constituted by the proper court. (Citing authorities)' See also 2 Jarman, Wills (7th ed. 1930) 1585; 2 Williams, Executors (12th ed. 1930) 729; Page, Wills (1901) Sec. 533."

Also, in the case of Hogate v. Hogate, 28 A. (2d) 769, l.c. 771, the Court held that generally, words "legal representatives" when applied by testator to personality signifies executor and administrator, and when applied to realty, those upon whom the law casts the real estate immediately upon the death of the ancestor.

In view of the foregoing decisions defining "legal representatives" we are inclined to believe that the Legislature in enacting Section 9457, supra, fully intended the words as used therein, to mean administrator or executor in the absence of any other provision in the law specifically excluding administration on such estates, under the established Probate Court procedure in Missouri. The Legislature could have made an exception in the case of estates of such recipients, but we cannot find wherein the Legislature did exempt such estates.

CONCLUSION.

Therefore, it is the opinion of this Department that by using the words "legal representatives" in Section 9457, page 1350, Laws of Missouri, 1945, the Legislature intended that such words were to mean administrator or executor as the case may be, and in the absence of such appointment by the Probate Court any accrued unpaid pensions cannot be paid.

Respectfully submitted,

APPROVED:

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