Opinion No. 59-70

July 8, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Richard H. Robinson Legal Division Bureau of Revenue Santa Fe, New Mexico

Conveyance of real property to a husband and wife gives rise to a presumption that the property is community property absent a different intention expressed in the deed.

OPINION

*{*112}* This is written in reply to your recent request for an opinion on the following question:

Does a conveyance of real property to a husband and wife, by deed describing them as husband and wife, give rise to a presumption that the property is community property?

It is my opinion that a conveyance of real property to a husband and wife, by deed describing them as husband and wife, does give rise to a presumption that the property is taken by them as community property.

It is my view that Section 57-4-1, N.M.S.A., 1953 Compilation, changes the result reached in the case of **August v. Tillian,** (1947) 51 N.M. 74, 178 P. 2d 590, as regards conveyance subsequent to July 1, 1947. The portion of the statute in question reads as follows:

". . . except, that when any such real or personal property is acquired by husband and wife by an instrument in writing in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is community property of said husband and wife, . . ."

*{*113}* The language is clear in expressing the Legislature's intentions. When the deed describes the parties to the conveyance as husband and wife, the presumption is that the property is taken as community property. It should be pointed out that while **August v. Tillian,** supra, reaches a different result, it involved construction of the statute as it read before the 1947 Amendment. It would therefore seem that it was the clearly expressed intention of the Legislature to change the result in **August v. Tillian.**

The case of **Brown v. Gurley,** (1954) 58 N.M. 153, 267 P. 2d 134, does not change this conclusion since the Court was then construing the statute as it read before the 1947 Amendment for a transfer made in 1937 and was therefore not concerned with the 1947 Amendment.

Applying the conclusion to the facts of the Brandenburg Estate problem, I arrive at the result that the conveyance to "Loyd Brandenburg and his wife, Margaret Brandenburg" gives rise to a presumption that the property was taken by them as community property, since you have not indicated that the deed expressed an intention otherwise.

Therefore, succession taxes should be assessed against the property as if it were community property.

Boston E. Witt