

Opinion No. 21-2782

January 16, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Mr. J. Benson Newell, District Attorney, Alomogordo, New Mexico.

Administration of Estate Non Resident Dying in State, Leaving No Heirs.

OPINION

{*16} On December 19, 1920, Mr. W. C. Whatley, Assistant District Attorney of the Third Judicial District, wrote to this office regarding the administration of the estate of one Ben McGath.

From this letter it appears that on May 17, 1920, McGath died intestate, in Lincoln county. Among his effects were found two certificates of deposit -- one on a bank in Phoenix, Arizona, for \$ 300, and one on the bank of Belfry, Montana, for \$ 500, and interest on the same for one year. The deceased was a stranger, and no heir or any one claiming an interest in his estate has appeared. The sheriff of Lincoln county was appointed administrator by the probate court of said county and proceeded to administer the estate under the escheat law. The Phoenix bank promptly paid its certificate of deposit, but the Belfry bank has refused to do so.

Accompanying Mr. Whatley's letter is a copy of a letter dated December 10, 1920, from the Attorney General of Montana. In this letter the Montana Attorney General takes the position that the administration of the estate of McGath, insofar as it applies to the certificate of deposit in the Montana bank, should be had under the laws of the State of Montana, and by a public administrator of Carbon county, Montana.

There are two things to be considered in this matter; the administration of the deceased's personal estate, and its distribution.

There is no question but that the law of the domicile at decedent's death governs the distribution of his personal estate. (Schouler on Wills, etc., section 1016).

{*17} Chapter 35 of our 1915 Codification (sections 2119 to 2124, inclusive) provides for the disposition of personal property left by a person dying intestate in any county in this state without heirs. Under this chapter, if no heirs appear, and no claims are filed against the estate the property will escheat to the treasurer of Lincoln county.

From our examination of the Montana statutes, we find nothing which conflicts with this disposition of the property of the decedent.

The case cited by the Attorney General of Montana, in his letter, *McCully vs. Cooper*, 46 Pac. 82, as well as other authorities, holds that a certificate of deposit is personal property within the jurisdiction of the person holding the certificate.

Section 27 of the Political Code of Montana, provides:

"All property within the limits of this state which does not belong to any person, belongs to the state."

A public administrator has authority to take charge of the estates of persons dying within his county. (Section 3075, Montana Political Code).

The public administrator must pay over the proceeds of the estates in his charge to the county treasurer. If there are no claimants or heirs, the county treasurer pays over such proceeds to the state treasurer upon order of the court. (Sec. 3084, Montana Political Code).

Thereafter, upon proper proceedings by the Attorney General the property escheats to the state. (Sec 4836, Montana Political Code).

The distinction or difference between the laws applying to the administration and the distribution of such estates as the one in question is discussed in *Murphy vs. Crause*, 66 Pac. 973. This matter is also discussed in *Schouler on Wills*, etc., sections 1180 and 1183.

From these and other authorities, it appears to be the law that the administrator appointed by the probate court of the domicile of the decedent at the time of his death has jurisdiction of all of the personal estate of the deceased, so far as its distribution is concerned; if there is personal property whose situs is in a foreign jurisdiction, the domiciliary administrator should procure the appointment of an ancillary administrator in the state where this property is situated; it would be the duty of this ancillary administrator to administer upon so much of the personal estate of the deceased as might come within his jurisdiction by reason of the situs of the property. After proper proceedings are concluded by this ancillary administrator, and no heirs appear to claim the estate, and the claims of creditors have been paid, it is the duty of the ancillary administrator to turn over the proceeds of the estate to the domiciliary administrator, to be disposed of by the latter under the laws of his jurisdiction.

We suggest, therefore, that you make arrangements with some person to act as an ancillary administrator in Carbon county, Montana. If, after this administration, there is a balance left in his hands as such administrator, he should be required to pay such balance over to the administrator appointed by the Lincoln county probate court. If such ancillary administrator refuses to make such payment, proper action should be taken in the courts of Montana to enforce the right of the New Mexico administrator to dispose of such proceeds under the laws of New Mexico.