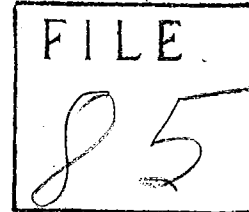


ADMINISTRATION: Upon refusal to grant letters of administrations under Section 2, Laws of Mo. 1941, page 289, widower widow or minor children under the age of 18, through their guardian, as the case may be, may assign title to automobile in the estate.
A creditor under Clause 2 of said section, supra, has the right to transfer the title to an automobile in the estate, if there be one.

December 2, 1941.

Mr. V. H. Stewart
Commissioner of Motor Vehicles
Jefferson City, Missouri

Dear Mr. Stewart:



We are in receipt of your request of November 19th, for an official opinion, upon the following statement of facts:

"This department kindly requests an opinion from your office in regard to the following:

"In the matter of an estate where Letters of Refusal of Administration are granted by the Probate Court, does the surviving wife or husband have authority to assign or transfer the certificate of title to the purchaser or should such survivor first obtain title in his or her name in order to make proper transfer.

"In other words if an assigned title is presented to this department together with a certified copy of Order of Refusal of Letters and the title shows assignment or transfer by the surviving husband or wife unto the purchaser of the car, should this department consider this a legal and proper transfer?"

Section 2, Laws of Missouri 1941, at page 289, reads 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 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."

In the case of Perkins v. Goddin, 111 Mo. App. 429, 1. c. 438, the Court said:

"Under the well-settled law of this state, on the death of a party, the personal property passes to the administrator, not to the heir, unless it be where the probate court, by order dispenses with an administrator under Section 2 of the Administration Statute. R. S. 1899. There was nothing of that kind in this case as shown by the fact that the Boone County Probate Court took up the administration and granted letters to appellant thereon."

In the case of Estate of Ulrich v. Johnston, 177 Mo. App. 584, the question was whether the costs of administration should first be paid and then the residue turned over to the widow as her absolute allowance when such residue would thereby be depleted to an amount less than the amount allowed as the absolute allowance to the widow. The Court held that the \$400 absolute allowance went direct to the widow and was her property stripped of the payment of the costs of litigation, and said (1. c. 589):

"It is not essential to consider the matter of good faith of the administrator here, as these allowances are given by the statute to the widow first of all other claims, and this includes the expense of administration, for they are not of the estate. Indeed, if there is not sufficient to pay them and the expense of administration besides, then no administration should be had."

and at page 590, the following:

" * * * but the Supreme Court has declared in plain terms, time and again, that the property enumerated in the statute and the allowance provided for are the absolute property of the widow and not parcel of the decedent's estate."

And at page 592, speaking of the Administration Law, the Court says:

" * * * it provides that if the estate is no greater in amount than is allowed by law as the absolute property of the widow, administration shall be dispensed with entirely. It is certain that, under the established rule of decision in this state, the widow's allowances are regarded as her absolute property and not to be considered as assets of the estate. The cases are multiplied which declare such to be true. In those states where the courts so construe these statutes, the rule obtains as well that the allowances go free to the widow first of the expenses of administration of the estate."

In the case of Jacobs v. Maloney, 64 Mo. App. 270, l. c. 272, the Court says:

"Neither the plaintiff nor anyone else, at the time of the transaction just stated, had been appointed or qualified as administrator of the estate of said deceased, nor does it appear that the probate court had made an order as provided in Section 2, Revised Statutes, authorizing plaintiff to collect, sue for, and retain all the property belonging to the estate of his father, * * * "

In the case of McMillan v. Wacker, 57 Mo. App. 220, l. c. 222, the Court says:

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"On the death of a party the personal property passes to the administrator, and he alone has a right to the possession thereof, unless indeed the probate court shall, by order, dispense with any administration, as provided for by section 2 of the administration statute. It is only 'after making such order such widow or minor children shall be authorized to collect, sue for and retain the property belonging to such estate.' R. S. 1889, Sec. 2. The probate court is the only tribunal having original jurisdiction to determine the question as to whether or not an administration is necessary."

From a review of the authorities heretofore set forth, supra, we must conclude that "first, that a widower, widow or minor children under the age of eighteen years, through their guardian, would have the right to transfer the title to an automobile as referred to in your opinion request for the reason that said automobile would become the absolute property as provided by law and without the necessity of granting letters of administration."

Turning to the second provision which provides: "second, it is our opinion that if a creditor applies for the refusal of letters under Clause 2, supra, and gives bond in the sum of \$100.00 properly approved by the probate court or judge thereof in vacation, that such creditor would also have the right to transfer the title of the automobile for the reason that we believe that the Legislature, through this section, has placed such a creditor in the same position as an administrator with all the powers and duties of a duly appointed and acting administrator."

Of course if other creditors or parties interested make application on the theory that other or further property will be shown and letters of administration are granted, then the duly qualified acting administrator would have the right to assign the title.

CONCLUSION

It is our opinion that upon the death of a person, and it is brought to the attention of the probate court having jurisdiction thereof, and the probate court or judge thereof in vacation refuses to grant letters of administration under Clause 1, Section 2, Laws of

December 2, 1941.

Missouri 1941, page 289, that the widower, widow or minor children under the age of eighteen years (through their guardian) as the case may be, is authorized and empowered to collect, sue for and retain said property as his or her absolute property as provided by law, and upon the order that letters of administration on said estate be refused, that he or she becomes invested with the authority to transfer the title to an automobile, if one be such estate.

Secondly, if letters of administration be refused by the probate court or judge thereof in vacation, under Clause 2 of Section 2, Laws of Missouri 1941, page 289, the creditor, applying and giving bond in the sum of \$100.00 which said bond being approved by the probate court or judge thereof in vacation, becomes invested with the authority to transfer the title to an automobile in the estate, if there be one.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

BRC:LB