

INHERITANCE TAXES:
FOSTER BROTHER NOT ENTITLED
TO EXEMPTIONS AND RATE OF
NATURAL BROTHER.

: "A's" adoption in Maine prior to 1917 to
: be given the same effect, insofar as "A's"
: rights under Missouri statutes are con-
: cerned as if "A" had been adopted in
: Missouri. "A" is child of adopting parents
: as fully as if born to them in lawful wed-
: lock; can inherit from them, but not their
: kinsmen. "A" is not brother of "B", a
: child of adopting parents; upon "B's" death
: intestate in Missouri, "A" can-
: not inherit from "B", and "A"
: is not entitled to exemptions
: and rate allowable to brother
: under inheritance tax statutes.



January 29, 1953

1-29-53

Honorable C. E. Gillilan
Assistant Supervisor
Inheritance Tax Unit
Department of Revenue
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department as to whether a foster brother is, under the inheritance tax statutes of this state, entitled to the tax rates and exemptions allowable to a natural brother in those instances when the deceased died intestate.

Reference is made to correspondence attached to the opinion request, and it is from this source that the facts in the case are given.

From such correspondence it appears that one "A" was taken into the home of a couple and raised as their child, and that "A" has used their surname all his life. It is believed that an adoption of "A" was intended by his foster parents, and that the adoption probably did take place, although formal adoption proceedings provided by the statutes of the state of Maine, where the facts are alleged to have taken place, have probably not been complied with. The date of the alleged adoption is not given, but it appears that "A" is now approximately sixty years of age, and it is believed that he must have been adopted prior to the year of 1917.

While the legality or illegality of the adoption of "A" under the Maine laws does not appear; for the purpose of our present discussion it is assumed that the adoption was legal, and it is necessary for us to determine what effect, if any, is to be given such adoption under the Missouri statutes.

Honorable C. L. Gillilan:

Section 453.170, RSMo 1949, states what effect shall be given in Missouri to adoptions under the laws of other states, and reads as follows:

"Any person adopted pursuant to the laws of other states of the union, whenever the adopted person's rights are affected or determined by the laws of this state, shall, from the date of said adoption, be deemed and held to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful wedlock and such adoption shall have the same force and effect as adoption under the provisions of this chapter, including all inheritance rights."

Section 453.090, RSMo 1949, provides what the effect of adoption shall be, and reads as follows:

"1. When a child is adopted in accordance with the provisions of this chapter, all legal relationships and all rights and duties between such child and his natural parents (other than a natural parent who joins in the petition for adoption as provided in section 453.010) shall cease and determine. Said child shall thereafter be deemed and held to be for every purpose the child of his parent or parents by adoption, as fully as though born to him or them in lawful wedlock.

"2. Said child shall be capable of inheriting from, and as the child of, said parent or parents by adoption as fully as though born to him or them in lawful wedlock and, if a minor, shall be entitled to proper support, nurture and care from said parent or parents by adoption.

"3. Said parent or parents by adoption shall be capable of inheriting from and as the parent or parents of, said adopted child as fully as though said child had been born to him or them in lawful wedlock, and, if said child is a minor, shall be entitled to the services, wages, control and custody of said adopted child.

Honorable C. L. Gillilan:

"4. Said adopted child shall be capable of inheriting from and taking through his parent or parents by adoption property limited expressly to heirs of the body of such parent or parents by adoption.

"5. The word 'child' as used in this section, shall, unless the context hereof otherwise requires, be construed to mean either a person under or over the age of twenty-one years."

Assuming that "A" was legally adopted under the Maine law, such adoption is then to be given the same effect in this state and if he had been adopted under Missouri laws, insofar as the rights of "A" are concerned under Missouri statutes.

From the provisions of the preceding section it is noted that the adopted child shall be deemed and held to be for every purpose, the child of the adopting parents as fully as though said child were born in lawful wedlock to the adopting parents. It is also noted that the adopted child shall be capable of inheriting from his foster parents, and they from him as fully as if the adopted child were born to said foster parents in lawful wedlock.

It appears that the present Missouri adoption statutes are based upon the Adoption Act of 1917, and that there is very little change in such laws to date.

No question has been asked regarding the adopted child's relationship to the adopting parents, and the legal rights of the former to inherit from the latter under the statutes of descent and distribution, but rather the inquiry raises the question impliedly, if not expressly, what effect, if any, the adoption proceedings will have upon the relationship between the adopted child and other members of the family of the foster parents. In the present case, will "A", the adopted son, be legally considered as a brother of "B", the natural born son of the adopting parents, and upon the death of "B", intestate in Missouri, is "A" the heir of "B", under the laws of descent and distribution?

In the event "A" was adopted under the laws of Maine prior to the Missouri Adoption Act of 1917, it appears that he could inherit only from the adopting parents, and not from their kinsmen.

We here call attention to the case of Hockaday vs. Lynn, et al., 200 Mo. 456, which appears to be the leading case in point, at l.c. 468-472, the court said:

Honorable C. L. Gillilan:

"In fact, it may be laid down as a general conclusion that while the Statute of Adoption must be read into the Statute of Dower and that of Descents and Distribution, it is with this singularity, always to be observed, viz., that the adopted child is so let in only for the purpose of preserving in full its right of inheritance from its adoptive parent; and the door to inheritance is shut and its bolt shot at the precise point. * * * * *

* * * * *

The doctrine to be gathered from the foregoing cases is announced to be, in effect, to deny the right of the adopted child to succeed to the estate of any member of the adopting family other than the adopting parent, and that such adopted child does not succeed to the estate of ancestors or collateral kin of the adopting parent, nor to the estate of children born to the adopting parent. (27 Am. and Eng. Ency. of Law (2 Ed.), 334; 1 Cyc., 933)."

(Underscoring ours.)

It would appear from the quoted portions of above case that "A" would not be the brother of "B", but we shall consider this matter further before reaching a conclusion.

The present adoption statutes do not, nor does any other statute, insofar as we have been able to ascertain, define the word, "brother," consequently, we find it necessary to look to other sources for a suitable definition of the term. However, it is one of the cardinal rules of statutory construction that words used in a statute shall be given their plain or ordinary meaning unless it was the intention of the law-making power to give them some other meaning.

A general definition of the word, "brother," and one in which the word has been given its ordinary meaning is found in Volume 12 C.J.S., p. 373, as follows:

"BROTHER. The correlative of 'sister'. The word has been variously defined by lexicographers as a male person, in his relation to another person or persons of either sex born of the same parents; a male relative in the first degree of descent or mutual kinship; a male person in his relationship to any other person of the same blood

Honorable C. L. Gillilan:

or ancestry; a male person who has the same father and mother with another person, or who has one of them; he who is born from the same father and mother with another, or from one of them only. In particular connections, it has been held that the term, when used without any qualifying words, may include a brother of the half blood, but does not include a legitimate child of an adopted child's foster parents."

(Underscoring ours.)

As to whether "A", the foster brother of "B", the deceased is a "brother", within the meaning of the word as defined above, and if "A" is entitled to the exemptions and tax rate allowed a brother of the deceased, within the meaning of state inheritance tax statutes requires a consideration of the inheritance tax statutes involved.

Paragraph 2, Section 145.090, RSMo 1949, provides what exemptions shall be allowed the taxpayer under certain circumstances, and reads as follows:

"2. All transfers of property or any beneficial interest therein of the clear market value of twenty thousand dollars to the surviving husband or wife, said exemption to be in addition to the marital rights of the widow or widower who shall renounce the will of a deceased husband or wife, or whose spouse died intestate; provided, however, that if a widow or widower accepts the benefits provided by the will of a deceased spouse said twenty thousand dollar exemption shall be in addition to an amount equal to the aggregate value of such marital rights to which such widow or widower would have been entitled if such widow or widower had renounced said will or if said spouse had died intestate, and five thousand dollars to each of the other persons described in subdivision (1), subsection 1 of section 145.060; provided, however, that in all cases where any of the lineal descendants of the decedent are idiotic, insane, blind, deformed, or otherwise

Honorable C. L. Gillilan:

mentally or physically incapacitated from performing labor whereby such descendant may not be able to earn a living, there shall be exempted from the provisions of this chapter an amount up to the sum of fifteen thousand dollars."

Paragraph 2, Section 145.060, RSMo 1949, provides the applicable tax rate to be used in computing the inheritance tax due from a taxpayer related to the deceased within certain degrees, and reads as follows:

"(2) Three per cent: Where the person or persons to whom such property or any beneficial interest therein passes shall be the brother or sister, or the descendant of a brother or sister of the decedent, the wife or widow of a son, or the husband of a daughter of the decedent, at the rate of three per cent of the clear market value of such property or interest therein; "

It is noted that the word "brother", has not been defined in any of the above quoted sections of the inheritance tax laws, but from the context, the word appears to be used in its ordinary sense, and in the absence of any expressed or implied intention of the Legislature that it should have any other or different meaning, it will be given its ordinary meaning.

In view of the foregoing, it is our thought that "A's" adoption in the State of Maine is to be given the same effect as if he had been adopted under the laws of Missouri, insofar as "A's" rights under Missouri law are concerned, and that for all intents and purposes (except as will be presently noticed) "A" shall be considered the child of the adopting parents as fully as if he had been born to them in lawful wedlock. However, "A's" adoption being prior to the Missouri Adoption Act of 1917, his rights of inheritance were limited by the statutes and court decisions in effect prior to the Act. Under said laws, he was allowed to inherit only from his foster parents and not from the kinsmen of such parents, since he did not become a relative of the kinsmen by virtue of his adoption. Therefore, "A" is not a "brother" of "B", a son of the adopting parents, and under the statutes of descent and distribution cannot inherit from "B" as "B's" heir. "A" cannot claim the exemptions and the tax rate applicable to those instances when the taxpayer and the deceased were related to each other in the first degree as brothers, since "A" is not a brother of "B", within the commonly accepted meaning of the word "brother", and as used in the above mentioned statutes.

Honorable C. L. Gillilan:

CONCLUSION

It is, therefore, the opinion of this department that the adoption of "A" in the State of Maine prior to 1917, is to be given the same legal effect as if "A" had been adopted in Missouri, insofar as the rights of "A" are affected under Missouri statutes. That, under Missouri statutes and court decisions in effect at the time of the adoption, "A" became the child of the adopting parents for all intents and purposes as fully as though he had been born to them in lawful wedlock, except that "A" could inherit only from his foster parents, and not from their kinsmen. By virtue of his adoption, "A" did not legally become the brother of "B", a son born to the adopting parents, and upon the death of "B" in the State of Missouri, "A" did not become the heir of "B". "A" is not entitled to the exemptions and tax rate allowable to a brother of deceased under inheritance tax statutes.

The foregoing opinion, which I approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General