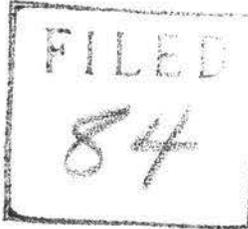


PUBLIC ADMINISTRATORS: The Legislature has prescribed by passage
ESTATES: of Section 473.153, paragraph 5, V.A.M.S.,
PROBATE COURTS: that every administrator who is not an
attorney, may not appear in court, except
by attorney, and this section of law includes public administrators
who must meet the same requirements as an individual administrator,
and public administrators, like individual administrators, may file
their own inventories and settlements.



May 6, 1960

#40

Honorable Edward W. Speiser
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Mr. Speiser:

This is in answer to your opinion request of recent date
which reads in part as follows:

"Section 473.153, Sub-section 5, provides
that 'no executor or administrator other
than one who is an attorney may appear in
court, except by an attorney.'

"The Public Administrator would like to
know whether or not he may serve and ap-
pear in Probate Court without an attorney.
The Public Administrator is not an at-
torney."

This office has already said in an opinion to the Honorable
Lee C. Sutton, Member, House of Representatives, dated April 23,
1956, that the Legislature having prescribed the method of ad-
ministration of an estate and the rules and regulations to be
observed in relation thereto - "that no executor or administra-
tor, unless he is an attorney, may appear in court except by
attorney," and "that any executor or administrator may prepare
and file his own inventories and settlements," we are bound to
follow, and may not prescribe a practice in contravention to,
the provisions as enacted by the Legislature.

The above opinion is based on Section 473.153, paragraph 5,
V.A.M.S., and this paragraph reads as follows:

"No executor or administrator, other than
one who is an attorney, may appear in court

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except by attorney, and such attorney may not be a salaried employee of the executor or administrator, but when the executor or administrator is an attorney, nothing herein shall prevent his being represented in court by a partner, associate or employee who is an attorney. Any executor or administrator may prepare and file his own inventories and settlements."

It is to be noted at this point that the Legislature did not in the above quoted section of law expressly exclude or exempt public administrators from said statute.

We therefore turn to an examination and comparison of the statutes pertaining to the public administrator and an individual administrator or executor.

Sections 473.730, et seq., V.A.M.S., sets forth the law pertaining to public administrators and reads in part as follows:

"Every county in this state, and the city of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be ex officio public guardian and curator in and for his county. Before entering on the duties of his office, he shall take the oath required by the constitution, and enter into bond to the state of Missouri in a sum not less than ten thousand dollars, with two or more securities, approved by the probate court and conditioned that he will faithfully discharge all the duties of his office, * * *" (Emphasis supplied.)

The duties of the public administrator are provided for in Section 473.743 and because of its length it will not be quoted but suffice it to say it provides the instances and circumstances under which he is authorized to take into his charge and custody the estates of deceased persons.

In Section 473.750, V.A.M.S., reference is made to the powers of the public administrator and reads as follows:

"In addition to the provisions of sections 473.730 to 473.767, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are

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enjoined upon or authorized against executors and administrators, guardians and curators by chapters 472 to 475, RSMo, so far as the same may be applicable. He shall have power to administer oaths and affirmations in all matters relating or belonging to the exercise of his office."

Sections 473.110 to 473.217, V.A.M.S., provides for individual administrators and executors and sets forth their qualifications, etc.

And Section 472.010, V.A.M.S., defines the term administrator as follows:

"'Administrator' includes any administrator de bonis non, administrator cum testamento annexo and administrator during absence or minority." (Emphasis ours)

Although we are unable to find any appellate decisions directly in point, the Supreme Court of Missouri had an occasion to discuss this subject and the position of individual administrator and executor as compared to the office of public administrator in the case of State ex rel. Russell v. Mueller, 60 SW2d 48, 50, par. [2] and said as follows:

"Of course, the very nature of the public administrator's office serves to differentiate certain features of his administration of an estate from that of an individual administrator or executor, yet in all material respects the duties and liabilities are the same.***"
(Emphasis ours)

Our Supreme Court has by this case thus indicated that "in all material respects the duties and liabilities" of the above two positions, i.e., individual administrators and public administrators, are the same. And it is also evident from reading paragraph five of Section 473.153, supra, as above quoted, that the Legislature made no express exemption for public administrators. The language used in this section is clear -- "No executor or administrator, * * * may appear in court except by attorney," and this indicates that when the executor or administrator is not an attorney, then he must employ one before making an appearance in court.

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Your attention is also called to 34 C.J.S., Section 1050, page 1334, where there is a general discussion concerning public administrators and the following statement of law is found concerning this subject:

"* * *He holds substantially the same relation to each individual estate committed to his charge that a private administrator would, being liable to the same extent and amenable to the same remedies."

After an examination of the statutes applicable to your question and above court case, we are not convinced that the Legislature intended for Section 473.153 to apply only to individual executors or administrators and not to public administrators. Our Court has already said that the office of public administrator and individual executor or administrator does not "materially differ." In view of the above, we are therefore not prepared to say that paragraph 5 of Section 473.153, supra, does not apply to public administrators.

CONCLUSION

It is, therefore, the opinion of this office that the Legislature has prescribed, by passage of Section 473.153, paragraph 5, V.A.M.S., that every administrator who is not an attorney may not appear in court, except by attorney and this section of the law includes public administrators who must meet the same requirements as an individual administrator, and that public administrators, like individual administrators, may file their own inventories and settlements.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Burleigh Arnold.

Yours very truly,

John M. Dalton
Attorney General

JE:vlw:ar