

PUBLIC ADMINISTRATOR: The public administrator may be appointed
INHERITANCE TAX APPRAISER: and serve as an inheritance tax appraiser
PROBATE COURT: of an estate pursuant to Section 145.150
and there is no incompatibility between
the duties of a public administrator and
a tax appraiser except in cases where the
public administrator is acting pursuant to
Sections 473.743 et seq.

September 9, 1960



Honorable Robert E. Wilson
Prosecuting Attorney
Polk County
Bolivar, Missouri

Dear Mr. Wilson:

This will acknowledge receipt of your recent letter in which you ask for our official opinion on the following question:

"I hereby request the opinion of your office on the following question: May the public administrator in a third or fourth class county lawfully serve as inheritance tax appraiser in estates where he is not serving as the administrator, or is there a conflict of interest in these two positions which would prevent him from acting in the capacity of inheritance tax appraiser in other estates?"

Section 473.730, RSMo 1949, as amended, provides:

"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

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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, which said bond shall be given and oath of office taken on or before the first day of January following his election, and it shall be the duty of the judge of the court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property; and such court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after such demand, may remove the administrator and appoint another."

The duties of the public administrator are provided for in Section 473.743 and read as follows:

"It shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and estate of all insane persons in his county, in the following cases:

"(1) When a stranger dies intestate in the county without relations, or dies leaving a will, and the executor named is absent, or fails to qualify;

"(2) When persons die intestate without any known heirs;

"(3) When persons unknown die or are found dead in the county;

"(4) When money, property, papers or other estate are left in a situation exposed to

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loss or damage, and no other person administers on the same;

"(5) When any estate of any person who dies intestate therein, or elsewhere, is left in the county liable to be injured wasted or lost, when said intestate does not leave a known husband, widow or heirs in this state;

"(6) The persons of all minors under the age of fourteen years, whose parents are dead, and who have no legal guardian;

"(7) The estates of all minors whose parents are dead, or, if living, refuse or neglect to qualify as curator, or, having qualified have been removed, or are, from any cause, incompetent to act as such curator, and who have no one authorized by law to take care of and manage their estate;

"(8) The estates or person and estate of all insane persons in his county who have no legal guardian, and no one competent to take charge of such estate, or to act as such guardian, can be found, or is known to the court having jurisdiction, who will qualify;

"(9) Where from any other good cause, said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost."

Other sections of 473.730, et seq., provide for the public administrator's compensation, his powers and duties.

We next refer you to Section 145.150, RSMo 1949, as amended, where the probate court is given jurisdiction over the estate of a decedent in order that it may determine the amount of inheritance tax due the state and provides for the appointment of appraisers to assist the court in reaching its determination. In paragraph 3 of this same statute, provision is made for the qualifications of an appraiser and reads in part as follows:

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"* * *appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in the estate or the attorney for any of the parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under this chapter."

The above statute does not appear to prohibit appointment of a public administrator as tax appraiser so long as he is not acting as "administrator or beneficially interested in the estate or the attorney for any of the parties" to the estate.

Nor are we able to find any constitutional limitation prohibiting the public administrator from holding the position of inheritance tax appraiser if he is otherwise qualified and appointed.

There being no apparent constitutional or statutory prohibition against a public administrator serving as tax appraiser, we turn then to see if the job or duties of a public administrator (who is otherwise qualified) are incompatible with the duties of an inheritance tax appraiser.

We have already above quoted the statutory duties of a public administrator. Section 145.160, RSMo 1949, provides for the duties of the tax appraiser and reads in part as follows:

"1. The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath."

In the case of *In re Hulls' Estate*, 337 Mo. 658, 85 S. W. 2d 621, the functions of an inheritance tax appraiser were discussed and the court said, "Under the act, the probate judge is the assessor. He appoints an appraiser to value the property transferred."

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Thus it seems evident that a public administrator can serve as tax appraiser pursuant to his appointment (Section 145.150) and perform the duties of appraiser as provided by Section 145.160, and not be in conflict with his office or duties as public administrator or have abridged any constitutional or statutory enactments, so long as he is acting as appraiser in estates which he is not required to act on as public administrator pursuant to Section 473.743, et seq.

CONCLUSION

The public administrator may be appointed and serve as an inheritance tax appraiser of an estate pursuant to Section 145.150 and there is no incompatibility between a public administrator and a tax appraiser except in cases where he is acting pursuant to Section 473.743, et seq.

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

Very truly yours,

JOHN M. DALTON
Attorney General

JBA