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Opinions of the Attorney General

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January 31, 1949

The Honorable P. M. Paulsen
County Judge, Cass County
Fargo, North Dakota

Dear Judge:

Re: Section 57-3729 of the 1943 Revised Code.

Your letter of January 28, 1949, asking our opinion upon the following situation, has been received:

You are particularly interested in joint tenancies when one of the joint tenants or owners is deceased. If the county court can determine without a regular probate proceeding that there would be no estate tax due, would it be proper for the county court to make an ex parte order directing the depositories to deliver such securities to the surviving joint owner.

This office, as far as our records show, has never been asked this question.

It is apparent that, under section 57-3717 of the 1943 Revised Code, the county court may cause a preliminary inventory of an estate to be made to determine the probability of an estate tax being due; and from section 57-3718, it appears that the county court may make an order exempting any estate from payment of estate tax when it appears that such estate is so exempt. It may be that in the ordinary case an administration should be had, but there are many cases where it is plainly apparent to the court that the entire estate is exempt from taxes and claims of creditors. In such a case it would seem entirely unnecessary to burden such estate with the expense of administration. In such a case, it is our opinion that the court would be authorized by section 57-3718 to make an order exempting such estate from payment of any estate tax.

The evident purpose of section 57-3729 is to insure payment of estate tax upon the decedent's interest in the jointly-owned property which may have been in the safety deposit box at the time of his decease. The joint property, of course, becomes the property of the surviving joint-tenant or tenants, so he or they are entitled to possession subject to insurance as provided by this section that any estate tax due from the estate of the deceased will be paid. If it is apparent to the county court that no such tax is due, then, in our opinion, the county court is authorized by section 57-3729 to order a delivery of jointly-owned property in a safety deposit box to the surviving joint-owner or owners.

Yours very truly,
WALLACE E. WARNER
Attorney General
By C. E. BRACE
Assistant Attorney General

February 12, 1949

Mr. Lee F. Brooks
State's Attorney
Fargo, North Dakota

Dear Mr. Brooks:

Your letter of February 11 to Wallace E. Warner, Attorney General, has been turned over to the undersigned for reply.

You request an opinion as to the duties of your county commissioners under the provisions of section 61-1615 and in reply will say that it is our opinion that said section gives to the county commissioners the power to levy the tax therein named, which tax is for the purpose of providing for water conservation districts.

However, we have section 61-1618 which reads as follows:

"In lieu of the purchase of right-of-way and other interesst in property and the payment of the expenses thereof and the expense of the construction of any water conservation project through a general tax levy, the board of commissioners may proceed to acquire the necessary interests in property and to construct, repair, alter, and maintain water conservation projects through the use of special assessment warrants."

The following section provides that notice shall be given to the owners of property to be affected by the project and section 61-1620 provides that proceedings shall be similar to the proceedings had under Chapter 12 of Title 61 with reference to the construction of flood irrigation projects.

It is, therefore, our opinion that if in the opinion of the commissioners the entire county is benefitted by the creation of such a district, the entire county should pay the expenses through a county levy, but if the commissioners' opinion is that it would be unfair to make a levy, a special assessment could be made and charged to the property of the owners benefitted.

Yours very truly,
WALLACE E. WARNER
Attorney General
By P. B. GARBERG
Assistant Attorney General