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Estates, Fiduciaries and Guardianship

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ESTATES, FIDUCIARIES AND GUARDIANSHIP

ESTATES UNDER \$500—Chapter 124 provides an alternate method of settlement for estates under \$500.¹ The Act permits a bank or person,² indebted to or having funds not exceeding \$500 which are the property of the estate of a deceased person, to pay these funds to the clerk of the circuit court of the county in which the deceased resided at death.³

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30. *Latinette v. St. Louis*, 120 C.C.A. 638, 201 Fed. 676 (C.C.A. 7th, 1912). The court upheld an act of Congress which authorized the city of St. Louis, Missouri, to take lands in Illinois for use as a terminus of a bridge across the Mississippi River.
 31. Air Commerce Act of 1926, 44 Stat. 568 (1926), 49 U.S.C. §§171-184 (1940).
 32. The statute creating the Port of New York Authority (N.Y. Laws 1921, c. 154) seems to present a clear picture of the operation of compacts between states and the methods by which they are reached. It will be noted, however, that the act of the New York Legislature provides for the cooperation of the two states concerned, with New York retaining a substantial measure of control, and receiving a clear and direct benefit from the operation of the Authority.
In *City of New York v. Wilcox, et al.*, 189 N.Y.S. 724, 115 Misc. Rep. 351 (1921), the act was held valid because it purported to operate only within constitutional limitations. The court said, "It is obvious . . . that the State of New York has parted with none of sovereign rights, nor relinquished the control over any property belonging to the people of New York."
 33. The New York Act of 1921, *supra*, note 26, was made with the sanction of Congress. Further discussion of compacts between states is beyond the scope of this note.
 1. Ind. Acts 1947, c. 124, §8, so provides. For previous procedure see Ind. Acts 1881, c. 45, §193, et seq., as amended, Ind. Stat. Ann. (Burns, 1933) §6-1701 et seq.
 2. *Id.* §1, ". . .including without limitation thereon, the state or a municipal corporation. . ."
 3. *Ibid.*

Payment may be made upon application by any person entitled under this Act to all or a portion of the funds. It is evident that this may be done only in cases where the entire gross estate, real and personal, of the decedent does not exceed \$500 since to be entitled under this Act a verified petition must be filed alleging that the gross estate does not exceed \$500.⁴ Payment to the clerk constitutes a discharge of the payor's liability.

Upon filing of a verified petition by the proper claimant the judge of the court having probate jurisdiction may pay funds not exceeding \$500 to the claimant without requiring letters testamentary or letters of administration.⁵ A widow is entitled to receive the money upon her statutory allowance. If there is no widow, payment is to be made according to the applicable laws of descent and distribution or pursuant to a will as the case may require.

If the decedent's entire gross estate, real or personal, does not exceed \$500, the court may vest title in the parties in interest as tenants in common.⁶ Compliance with the Indiana inheritance tax law is required in cases where the proposed distributee's relationship to the deceased person does not provide sufficient exemption.⁷

In cases of illegality, fraud, or mistake, the statutes providing for the setting aside of final settlements in estates shall govern in setting aside distribution orders.⁸ Payment of bona fide obligations of the decedent provides a distributee under this Act with a complete defense to claims or actions of creditors of the decedent, unless the distributee had personal knowledge of these claims. An unintentional preference by the distributee is not sufficient cause to set aside a distribution on the ground of illegality or mistake.

This Act does not prevent application of funds held by a person or corporation to the payment of decedent's funeral expenses, last illness, or taxes. A person holding funds of a decedent who uses them to satisfy these expenses or taxes is

4. Ind. Acts 1947, c. 124, §3.

5. Ibid.

6. Id. §4.

7. Id. §5.

8. Id. §6, procedure for setting aside, Ind. Acts 1881, c. 45, §177, Ind. Stat. Ann. (Burns, 1933) §6-1424.

discharged from liability to anyone claiming under or against the estate.⁹

Guardianship—Under Chapter 108, a court having probate jurisdiction may terminate the guardianship of estates of minors and incompetents if the estate is exhausted or consists of not more than \$300 cash. On termination the court shall order the guardian to pay to the clerk of the circuit court the balance of the estate for the use and benefit of the minor or incompetent. The court may designate a successor, or direct the guardian to continue, as guardian of the person of the ward if necessary. The court may provide that the guardian serve without a bond or periodic reports.

Chapter 356 allows any person indebted to or having funds not exceeding \$300, of a minor or incompetent without a legal guardian, to pay these funds to the clerk of the circuit court of the county in which the minor or incompetent resides. Payment may be made upon application of the person having custody of the minor or incompetent. However, if the minor is 14 years of age and otherwise competent, he is the only person authorized to make application. Payment to the clerk operates as a discharge from liability. The clerk holds the funds for the use and benefit of the minor or incompetent entitled to them.

Chapter 142 provides for payment, not exceeding \$300, from funds received by the clerk to a minor without a guardian. The procedure remains the same as under the previous Act.¹⁰

Chapter 197 enables a guardian of an insane ward to carry out written contracts for the sale or disposition of real or personal property made by the ward prior to his adjudication of insanity.

The guardian must file a verified petition setting forth the facts and a copy of the contract, and if the court finds the contract was a valid and binding one, it may authorize the guardian to carry it out. The guardian is also required to satisfy the court that "the heirs at law of the person of unsound mind" were notified of the intention to carry out the contract. These heirs may intervene to show cause why the

9. *Id.* §9.

10. Ind. Acts 1901, c. 186, Ind. Stat. Ann. (Burns, 1933) §§6-1507, 6-1508. This statute permitted payments not to exceed \$100.

contract is invalid and should not be completed by the guardian.¹¹

That the guardian must notify the "heirs at law" presents a unique problem. It is elementary that a living person has no "heirs at law." Therefore, the act may be a nullity since the "heirs at law" cannot be determined and notified when the petition is filed. Or, the section purporting to require notice may be construed to mean nothing since the "heirs at law" cannot be notified. Or, the section may be construed to require notification to those persons who would be heirs at law as if the insane ward had died at the time the petition is filed. The Act might be construed to mean only contracts of a *deceased* insane ward could be completed, but if that were true then the guardian would not be the proper person to carry out the agreement since the status of guardian-ward terminates with the death of the ward. In view of this patent ambiguity it is doubtful that the guardian can safely proceed under this Act.

Previous to the passage of Chapter 197, there was no express statutory provision which permitted a guardian of an insane ward to complete contracts made by his ward prior to the time he was adjudicated to be insane.¹²

Decedent's Estates—Chapter 226 permits an administrator or executor of a solvent estate which has been closed to file a supplemental report for personal property inadvertently overlooked. A further inventory must be filed and any inheritance tax must be paid. The court may then order the disposition of these after discovered assets without giving notice of such proceedings. This eliminates the necessity of treating the newly discovered assets as comprising in effect a new estate and facilitates their disposition.¹³

Chapter 49 makes a change in the existing law as to filing of final accounts. A final account may now be filed six months after the date of the *first publication* of the notice, or shall be filed, unless excused by consent of the court,

11. Ind. Acts 1947, c. 197, §2.

12. Ind. Rev. Stat. 1852, c. 14, §8, Ind. Stat. Ann. (Burns, 1933) §8-207 (powers of guardian).

13. This statute provides an alternate procedure for solvent estates. See Ind. Acts 1891, c. 82, Ind. Stat. Ann. (Burns, 1933) §6-310 (providing for appointment of administrator de bonis non after settlement).

at the end of one year from the date of the *first publication* of the notice.

The earliest time within which a final account could be filed has caused considerable difficulty. Formerly, a final account could be filed six months after the date of giving notice.¹⁴ Since a notice of appointment of executor or administrator consists of three publications,¹⁵ notice was taken to mean a period of twenty-one days, and thus a final account could not be filed in less than six months and twenty-one days.¹⁶ A 1945 statute purported to correct this situation.¹⁷ Under its provisions, the time for filing a final account ran from the publication of the *first notice*. It seems apparent that this did not correct the previously existent difficulty, but left the law as it had been. Chapter 49 appears to settle this problem once and for all.

Fiduciaries—Chapter 351 permits a fiduciary who is authorized or required to sell corporate stock, bonds or other securities of any corporation held by him, to sell them under the direction of the proper court for cash at the market price of the securities at the time of sale. The market price may be more or less than the appraised or inventory value of the securities. The sale may be without notice or reappraisal of the securities. The sale provision applies only to those stocks, bonds or securities which are listed or traded on one of four exchanges—the New York Stock Exchange, New York Curb Exchange, Chicago Stock Exchange, or the San Francisco Stock Exchange—or securities which are the obligations of the U.S. Government.¹⁸

Securities not listed or traded on one of the enumerated exchanges may be sold, but the fiduciary must sell them in the same manner and under the same terms as other personal property of a decedent's estate.¹⁹

The Act also amends the law on participation in breaches of fiduciary obligations.²⁰ A corporation, company, associa-

14. Ind. Acts 1931, c. 81, §2, Ind. Stat. Ann. (Burns, 1933) §6-1401.

15. Ind. Acts 1881, c. 45, §35, Ind. Stat. Ann. (Burns, 1933) §6-311.

16. Hare v. Lawrence, 108 Ind. App. 423, 29 N.E. (2d) 339 (1941).

17. Ind. Acts 1945, c. 73, §1, Ind. Stat. Ann. (Burns, Supp. 1945) §6-1401.

18. Ind. Acts 1947, c. 351, §1.

19. Id. §2, for procedure of sale see Ind. Stat. Ann. (Burns, 1933) §6-801 et seq.

20. Id. §3.

tion, or their transfer agent are not put upon inquiry to determine a breach of a fiduciary obligation by the registration or transfer of securities by a nominee. They are liable for a breach only if they have actual knowledge of it or act in bad faith. Previously, the law applied only to registration or transfer by fiduciaries.²¹

The Act further amends the law on private sale of decedent's personal property by administrators and executors. Jurisdiction is conferred on "any court having probate jurisdiction" to authorize a sale under the provisions of that Act.²² The same power is given to a judge in vacation. Previously, the Act read "the circuit court or the judge thereof in vacation."²³ Sales of securities, discussed above, are specifically included under the private sale section.

Chapter 297 has made some important changes in authorized trust investments by fiduciaries.²⁴ Investment without court order is still permissible in bonds, notes or mortgage certificates. These must be secured by a first mortgage, subject only to liens of taxes and special assessments not delinquent, upon the fee simple title of improved real estate located within the state or within fifty (50) miles of the resident or principal office of the fiduciary. No obligations secured by a first mortgage may exceed 60% of the appraised value of the real estate. The obligations must mature within 16 2/3 years.

Permissible investments then fall into several categories:

1. Where the total obligations exceed 50% of the appraised value of the real estate securing them, but the obligation matures in 10 years, the terms of the loan-contract shall require a semi-annual principal reduction of not less than 2%, in addition to payment of current interest.

2. Where the total obligations exceed 50% and maturity exceeds 10 years, but does not exceed the maximum maturity of 16 2/3 years permitted by this Act, the terms of the loan-contract shall require principal and interest payments currently in at least semi-annual installments so as to amortize the entire obligation by the time the term of the loan contract has expired.

21. Ind. Acts 1927, c. 17, §3, Ind. Stat. Ann. (Burns, 1933) §31-103. The 1947 Act also enumerates administrators, guardians, etc. The previous statute used the term "fiduciary" only.

22. Ind. Acts 1947, c. 351, §4.

22. Ind. Acts 1943, c. 11, §1, Ind. Stat. Ann. (Burns, Supp. 1945) §6-802.

24. Amends Ind. Acts 1945, c. 184, §1, Ind. Stat. Ann. (Burns, Supp. 1945) §31-501.

3. If principal and interest payments are not required by the terms of the loan-contract, total obligations secured by a first mortgage shall not exceed 50% of the appraised value of the real estate securing the obligations. In this class, maturity may not exceed 5 years as the previous law required.

Appraisals must be evidenced in writing by two competent disinterested appraisers within one year prior to the investment.

The Act also permits investments, without court order, in the common stock of any solvent private corporation incorporated under the laws of any state or territory.²⁵ The stock must be a part of an issue of stock rated in one of the first six classifications established by a standard rating service specified by the Department of Financial Institutions. The stock must also (1) be listed or admitted to trading or (2) to be listed or admitted to trading on the New York Stock Exchange, New York Curb Exchange, Chicago Stock Exchange, or the San Francisco Exchange. There is a further qualification that the listing or admission of the stock must have been consummated within one year after public issue, and a cash dividend paid on the issue at least once in each of the ten years prior to investment. The Department of Financial Institutions may alter the rules on the classifications established for common stock or decrease the number of classifications eligible for investment.

Trust investments, without court order, may also be made in preferred stock of private corporations, if the common stock of the corporation is an authorized investment.²⁶ The preferred stock must be entitled to rights, privileges and preferences prior to those of the common stock.

Previously only a bank or trust company could hold participating interest certificates in common trust funds in its fiduciary capacity. It is now permissible to hold them with any co-fiduciary acting with it.²⁷

FINANCIAL INSTITUTIONS

Branch Banks—" . . . it shall hereafter be unlawful to establish any branch bank within the state until . . . it be first determined after a public hearing on due notice by the

25. Ind. Acts 1947, c. 297, §1 (f).

26. Id. §1 (g).

27. Id. §1 (h).