1981 S.C. Op. Atty. Gen. 11 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-1, 1981 WL 96528

Office of the Attorney General

State of South Carolina
Opinion No. 81-1
January 6, 1981

***1 SUBJECT: Fees, Costs, Inheritance, Title to Property, Jurisdiction, Courts**

In the administration of a domiciliary decedent's estate no out-of-state property should be included in the property evaluation for the purpose of computing the Probate Court's fee.

TO: The Honorable Patsy S. Stone
Judge of Probate
Florence County

QUESTION:

In the administration of a domiciliary decedent's estate, should out-of-state property, either personal or real, be included in the total property evaluation for the purpose of computing fees to be collected by the Probate Court?

DISCUSSION:

Fees for the probate court for an estate administration are calculated according to § 8–21–770, Code of Laws of South Carolina (Cum. Supp. 1979). That section says in part: 'Fees and costs are determined as follows: (1) To determine the property evaluation for estate administration, the totals of items (2) and (3) of the Warrant of Appraisement shall be used.' § 8–21–770(a)(1). The 'Warrant of Appraisement' is South Carolina Tax Commission Form 102, revised November 1, 1961. Item (2) is an 'inventory and appraisal' of personal property of the estate. Item (3) is an inventory and appraisal of real property of the estate. The Warrant does not say specifically whether out-of-state property should be on it.

The first question to be answered is whether out-of-state real property should be included. The opinion of this office is that it should not. This opinion is based on the fairly well-established rule that land is administered on only by the courts of its situs. See Clarke v. Clarke, 178 U.S. 186 (1900); 31 Am. Jur.2d, Executors and Administrators, § 38; see also Humble Oil & Refining Co. v. Copeland, 398 F.2d 365, 367 (4th Cir. 1968).

The second question, then, concerns personal property. It is the opinion of this office that no out-of-state personal property should be on the Warrant. There are two reasons for this.

First, the personal representative does not have 'title' to personal property situated outside the state in which he has been appointed. Dial v. Gary, 14 S.C. 573 (1881); see Collins v. Collins, 219 S.C. 1, 63 S.E.2d 811, 814–815 (1951). Whether the representative 'owns' property in another state depends on that state's law. See Goodrich & Scoles, Handbook of the Conflict of Laws, § 186 at 360 (1964). His right then to collect personal assets in another state and bring them back to South Carolina, where they would without question be under our court's jurisdiction, depends on leave of the other state.

Certainly however, it is possible for the representative to collect personal assets in another state, without that state opening an ancillary administration. As a matter of practice, the representative often does this. Courts and experts in the field have approved this practice. See Goodrich & Scoles, supra, § 186; Restatement (Second) Conflict of Laws, § 321 (1971); Uniform

Probate Code, § 4–201 (Uniform Laws Anno., Vol. 8, 1972). The practice promotes a cheaper, more unified and more efficient administration. Restatement, supra, § 321, comment (b). Many states have enacted statutes giving a foreign representative the authority to sue or do other acts without local appointment. See Goodrich & Scoles, supra, § 185; see also § 21–13–400, Code of Laws of South Carolina, 1976.

***2** Yet it remains that the representative's right to collect assets in another state depends on that state. It is illogical for the court to impose a fee on property it is not absolutely assured of taking jurisdiction over.

Second, the domiciliary court does not have jurisdiction to administer on personal property in another state, without that state's consent. In re De Lano's Estate, 315 P.2d 611 (Kan. 1957); see Collins v. Collins, supra, 63 S.E.2d at 816; but see Tripp v. Tripp, 240 S.C. 334, 126 S.E.2d 913 (1962). The state where personal property is situated should ordinarily defer to the domiciliary court on the ground of comity (see Collins v. Collins, supra, 63 S.E.2d at 817), but the state where the property is situated nevertheless has the right to assert jurisdiction. Id. at 816. Further, the rule that a domiciliary court may assert jurisdiction over out-of-state personal assets, regardless of that state's wishes, is probably based on the notion that the personal estate is located at the decedent's domicile, which notion has been severely criticized. See Goodrich & Scoles, supra, § 186 at 359.

In conclusion, two further points should be noted. One, this opinion, on what should be listed on the Warrant, is made in light of § 8–21–770(a)(1). By making the fee dependent on what is listed on the Warrant, the General Assembly has injected a factor-fee generation-onto a form whose previous function did not necessarily include that factor. The court may consider this factor, in deciding what should be on the Warrant, because the Warrant does not specify whether out-of-state property is included. Hence, the court has discretion to include or exclude. Two, if the Tax Commission cannot get the information it needs under this opinion's interpretation of § 8–21–770, it may of course change the forms (see §§ 21–15–320 & 21–15–350, Code, 1976, which authorize the Commission to prescribe the forms for the inventory and appraisal). [1]

CONCLUSION:

Therefore, it is the opinion of this office that, in light of § 8–21–770(a)(1), no out-of-state property, either real or personal, should be listed on the Warrant of Appraisal. Thus, the property evaluation for the purpose of computing fees should not include out-of-state property.

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Footnotes

1 It should be noted that this opinion does not deal with the authority of the Tax Commission to tax out-of-state intangible personal property. The Commission has that authority. See § 12–15–50, Code, 1976.

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