

1976 S.C. Op. Atty. Gen. 27 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4239, 1976 WL 22859

Office of the Attorney General

State of South Carolina

Opinion No. 4239

February 2, 1976

***1 Property owned by a decedent alien who is survived by aliens as next of kin does not escheat to the State.**

Attorney at Law

You have asked whether property owned by a decedent alien whose only relatives are also aliens is escheated to the State of South Carolina.

The common law rule, expressed at 3 Am. Jur. 2d, *Aliens*, Section 27, is that aliens can neither take by inheritance nor transmit by descent. This rule was at one time followed in South Carolina. See the cases cited at 3 South Carolina Digest, *Aliens*, Section 9. Because aliens were incapable of taking an estate by descent as next of kin, the early decisions of this State held that the estate escheated. See *Wrightman v. Laborde*, 1 Speers 525, and other cases listed at 8 S. C. Digest, *Escheat*, Section 3. However, in 1872, by Act No. 63, Volume XV, Statutes at Large, page 73, the General Assembly enacted the forerunner of what is now Section 57–101 of the Code. That Section is as follows:

‘Real and personal property of every description may be taken, acquired, held and disposed of by an alien, subject to the provisions of Section 57–103 and 57–104, in the same manner in all respects as by a natural-born citizen. And a title to real or personal property of every description may be derived through, from or in succession to an alien, in the same manner in all respects as through, from or in succession to a natural born citizen. Foreign corporations shall have and exercise all rights granted to aliens in this section.’

The Section obviously provides that aliens can own and convey property. (A limitation on amount, as constitutionally required, is set forth in Section 57–103.) It does not, however, use the terms ‘devise or inherit’ although it does state that property ‘may be derived through, from or in succession to an alien’. The original act was first codified in 1902 in Chapter LXVII of that Code, entitled ‘Of Intestates Estates’. The explanation provided there is that ‘aliens may inherit an natural born citizens’. In the case of *Tucker v. Atlantic Coast Lumber Co.*, 59 S. E. 859 (1907), the act was referred to as a complete abrogation of common law within certain acreage limits. It therefore appears from the legislative history of Section 57–101 that the act places aliens on a par with citizens.

Section 19–4 of the current Code has given some concern. That Section provides that alien widows of citizens may inherit from their husbands. If Section 57–101 means that all aliens freely inherit, there would be no need for Section 19–4. The current Code cites both provisions as originating in the 1872 Acts. This cite is erroneous, however, in that the widows' provision predates the general provisions. See Vol. 1, Revised Statutes of 1893 at 682, citing Volume VI, Statutes at Large, page 363. Section 19–4 was actually passed in 1828 and should have been repealed with the enactment of Section 57–101 because the general statute encompasses the more limited widows' provision.

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