STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

or naval forces during certain conflicts and who was killed in action or died from a service-connected disability.

The applicant under consideration was legally adopted in 1956. Her natural father died in 1966, while on active duty, of a service-connected disability.

QUESTION:

Does a child, whose natural father died while on active duty of a service-connected disability, have a right to a War Orphan Scholarship when 10 years prior to the death she was formally adopted by foster parents

ANSWER:

No.

OPINION:

19 M.R.S.A. § 535, provides that by a decree of adoption, the natural parents are divested of all legal rights in respect to the child, who becomes, for all intents and purposes the child of his adopters and stands in the same position as if born to them in lawful wedlock.

The decree divests the natural parents of all legal relationship to the child, and divests the child of all rights in his natural parents except the right of inheritance. Consequently, the child in question did not retain any right to a War Orphan Scholarship by reason of the death of her natural father.

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August 19, 1968
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

SUBJECT: The Attempt to Pass Property at Death in Contravention of the Statute of Wills

SYLLABUS:

AN ORDER TO DELIVER THE EQUITY IN AN INVESTMENT PLAN TO A SPECIFIED BENEFICIARY ON THE DECEDENT'S DEATH IS AN ATTEMPTED TESTAMENTARY DISPOSITION OF PERSONAL PROPERTY, AND IN ORDER FOR THE DISTRIBUTION TO BE VALID, IT MUST BE EXECUTED IN COMPLIANCE WITH TITLE 18 M.R.S.A. § 1.

FACTS:

The decedent died intestate leaving heirs at law. The estate is in the process of probate, an administratix having been appointed. An inventory and statement of deductions has been filed with the Inheritance Tax Division.

One of the assets of the estate is equity in an investment plan established by

individual employees of Bath Iron Works Corp. The only record of decedent's participation in the investment group is a card prepared by the individual who keeps the records of the group. The mother of the decedent is listed on the card as beneficiary. There is no signed agreement or instrument prepared by the decedent, signed by him or witnessed, which purports to dispose of the equity in the investment group upon his death.

QUESTION:

Is the reference naming of a beneficiary sufficient to pass the property to the designated beneficiary?

ANSWER:

No, the property passes through the estate. 18 M.R.S.A. § 6.

LAW:

"A person of sound mind and of the age of 21 years and a married person, widow or widower of any age may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request and in his presence, and subscribed in his presence by three creditable attesting witnesses . . . . " 18 M.R.S.A. §1.

REASONS:

The Supreme Judicial Court stated in *Savings Bank v. Mahoney,* 121 Me. 49 (1921), at page 51:

> "There is but one way of making a testamentary disposition of property and that is by will; the Statute of Wills was invented and adopted for the express purpose of establishing a legally defined procedure to be employed in giving post-mortem effect to an anti-mortem disposal of property."

Title 18 M.R.S.A. §1, often referred to as the Statute of Wills, clearly sets forth the criteria for the disposition of one's real and personal estate by will. The document must be "in writing, signed by him, or by some person for him at his request and in his presence, and subscribed in his presence by three creditable attesting witnesses."

The document which purports to transfer title to the decedent's equity in the investment plan at his death, although testamentary in character, is an evasion of 18 M.R.S.A. § 1. It is neither signed by the decedent, nor subscribed in his presence by three creditable attesting witnesses.

Certain property can be the subject of a testamentary disposition even though it does not pass under the terms of a valid will. Examples of this is found in the area of joint bank accounts and the proceeds of life insurance policies; however, there is no statutory exception for the situation involved herein.

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