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## Testamentary Trusts Should Remain under County Court Jurisdiction

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where the words "joint tenants" or "jointly" were used. The writer is not informed whether the words "and" or "or" inserted between the owners' names would suffice. No doubt the Attorney-General would rule in such a situation.

#### OTHER MORE HOMELY DEVICES FREQUENTLY BACKFIRE

There are many other devices used to transfer property without administration, some finding legal justification as in the use of living trusts or conveyances with a reserved life estate. There are still others such as joint safety boxes, envelopes containing currency or property with a designated beneficiary's name on the envelope, unrecorded deeds, and similar ingenious devices which, more frequently than not, result in litigation and a complete frustration of the original owner's desires.

Those that we have considered, however, constitute the principal devices now in use where property is transmitted from one person to another without court proceedings. It is readily apparent that it is possible to transfer property of an almost unlimited value by the use of several of these devices. The family home, automobile, bank account, securities, postal savings deposits, and government bonds can all be held or owned in such a manner that upon the death of one person beneficial ownership passes to another without estate proceedings. Those who are qualified may draw conclusions or point a moral by reason of this fact. This article does no more than summarily consider these *simple devices*.

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## TESTAMENTARY TRUSTS SHOULD REMAIN UNDER COUNTY COURT JURISDICTION

HON. C. EDGAR KETTERING

*Judge of the County Court, City and County of Denver*

The purpose of this comment is to discourage the practice in will-drafting of taking a testamentary trust out of the jurisdiction of the county court.<sup>1</sup> In nearly every case a testator who does it, acts under the misapprehension that he thereby shows his confidence in his trustee and eases his burden. He is doing quite the opposite. Then, again, some will-drafters are confusing this with the entirely justifiable practice of granting broad powers to the trustee—a subject with which it has no connection.

The effect is that every time the trustee needs or wants to construe the will, or interpret his rights or duties under the same, a need which may frequently occur, he must file a separate suit in the district court. This of course is not as simple a procedure for him as to file a petition in the county court, if the trust

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<sup>1</sup> COLO. STAT. ANN., c. 176, § 227(c) (1935).

estate is still pending there. Then again, the county court may have the advantage of previous contact with the particular estate and be familiar with the problems of the executor and trustee with respect to it.

There are numerous problems arising in the administration of a trust estate—often lasting over a period of many years—concerning which the trustee wants the advice or the formal orders of some court of competent jurisdiction. In addition to the cases of wills with trust provisions which are ambiguous and poorly drawn, are those in which, although expertly drawn, conditions have changed or unforeseen contingencies have arisen which require a court interpretation. Moreover, many situations arise in which the trustee wants a court order not to clear an ambiguity, but simply for his own protection—and this regardless of how broad the powers may be. Thus, unlimited discretion may be given as to amounts to be paid a beneficiary, yet the trustee may want the protection of a court order before making substantial monthly disbursements over a long period of time.

The only apparent advantages I can see in removing such cases from the jurisdiction of the county court are that the trustee need not file annual reports, and there is a small docket fee. The first of these is no real benefit to the trustee, because he has to keep the records which make up the report in either case. Furthermore, most trustees would prefer to file a report of their acts in court for their own protection. As to the docket fee, it is not large, being less than for decedents' estates.

It should be repeated that we are not discussing, nor attempting to discourage granting broad powers to trustees to act without court order. The trustee can be given any degree of discretion, relieved of giving bond, permitted to act without court order, etc., and still have the estate remain open as a trust estate under the jurisdiction of the county court. The point is he must be subject to the jurisdiction of some court, and I have tried to indicate some of the reasons why it is more convenient that it be the county court.

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#### NICHOLAS HEADS SOUTHERN COLORADO BAR

The Southern Colorado Bar Association held its annual meeting on July 11 and elected the following officers for the ensuing year: William B. Nicholas of Walsenburg, president; Ortus F. Adams of Trinidad, vice-president; Gilbert Sanders of Trinidad, secretary-treasurer; and Joseph F. Nigro of Trinidad, representative on the state Board of Governors.

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#### THE BOOK TRADER'S CORNER

Chalkley A. Wilson, Foote Bldg., Sterling, has a set of Pacific Reporters and U. S. Supreme Court Reports for sale.