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Some Tips on Practicing Law ... As of 1945

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away all laws created by bills introduced by title alone, but there is serious doubt as to whether or not this complies with the constitutional provision that all laws must be by bill. A title to a bill is not a bill.

Another proposal would give home rule to counties. There seems to be no merit to this proposal.

Another proposal would eliminate county courts and justice courts as constitutional courts, permitting the general assembly to make such provisions for county courts and justice courts as it deemed proper.

Another proposal is for a four-year term for members of both houses of the legislature. This is a violent change in our philosophy of government.

Another proposal would give to persons over eighteen years the right to vote. This is an amendment which grows out of war hysteria and is backed by the argument that one old enough to fight is old enough to vote. This is not a sound argument, as the best fighters are persons who lack discretion, while in a voter, we want the greatest discretion.

Another proposed amendment would transfer all funds to the general fund and would do away with all separate funds. In this connection, it is noted that the legislature may appropriate approximately twelve million dollars a year or twenty-four million dollars a biennium out of the state income of one hundred forty-four million dollars. One hundred twenty million dollars income each biennium is already earmarked. This is a serious abdication of the legislature's power over the purse strings.

These are some of the most interesting proposals before the Thirty-Fifth General Assembly and what will be done with them will not be known until final adjournment.

Some Tips On Practicing Law ... As Of 1945

BY HUBERT D. HENRY*

Inheritance Taxes

Under H. B. 498, effective June 10, 1945, the inheritance tax commissioner, rather than the county court, appraises the estate of the decedent and assesses the inheritance tax. The commissioner must give notice of the assessment to the executor, administrator, trustee or person filing the inheritance tax application and must file in the court, if any, under whose jurisdiction the estate is undergoing administration, a report

*Of the Denver Bar.

of the appraisement of the estate and the assessment of the tax. Any person dissatisfied with the assessment made, or tax fixed, may object by written objection filed in the county court within ninety days after the filing of the report of assessment. In case the inheritance tax commissioner fails to make appraisement within one year after the filing of the inheritance tax application, the county court may determine the value of the estate and the amount of taxes. The inheritance tax commissioner, rather than the court, may waive in whole or in part any interest, and the inheritance tax commissioner, rather than the county court, grants refunds of taxes erroneously paid. In the event the commissioner refuses to grant in full a written request for reduction or waiver of interest, an appeal may be taken within ninety days after the commissioner has given notice by mail of his decision, to the county court.

The commissioner may, at any time after ninety days after his report has been filed in the court, petition the court to enter judgment on the assessment.

Every administrator, executor or trustee shall within three months after the date of his appointment, or if no executor or administrator has been appointed, within three months after death, every person in actual or constructive possession of property of the decedent, or subject to the inheritance tax, shall within six months after death file an inheritance tax application. The commissioner may grant an extension of time for filing the application, but in event the application is not filed within the time required by law or the extended time, a fee of \$5.00 is assessed. The \$10.00 fee for examination of safety deposit box or appraisal of the estate is discontinued.

For non-tax estates the following fees are effective: On estates not in excess of \$300.00, no fee; on estates in excess of \$300.00, but not in excess of \$2,000, \$1.00; on estates in excess of \$2,000.00, but not in excess of \$5,000.00, \$5.00; on estates in excess of \$5,000.00, but not in excess of \$10,000.00, \$10.00; on estates in excess of \$10,000.00, but not in excess of \$20,000.00, \$15.00; on estates in excess of \$20,000.00, \$20.00. When the total amount on deposit in a bank, or the total amount owing by some one person, or the total value of securities in one company, or the total value of property in the hands of one person does not exceed \$300.00, such deposit, debt, securities or property may be paid, transferred or delivered without a release by the attorney general. The attorney general may make such regulations with reference to waiving the provisions regarding release as he deems necessary and proper.

The lien of inheritance taxes upon property passed and transferred exists for fifteen years from date of death.

Life estates and annuities are computed on a four per cent rather than a five per cent basis.

Probate Matters

H. B. 109, effective July 4, 1945, provides a method of electing to take the statutory one-half of the estate or under the will for a surviving spouse who is incompetent. Special administrators may be appointed without notice. Personal property may be sold without order of court where the will contains a power of sale as to personal property. When a notice to creditors is not published within the fifteen-day period required by law, the court may direct the publication of a notice to creditors and may fix the time within which claims shall be filed. If a claim is filed upon a written instrument, the written instrument may be withdrawn upon order of court and substitution of a copy thereof. When an estate is to be closed, a personal representative shall present to the court for allowance all claims which have been approved by him and which have not been allowed or disallowed. The clerk of the court shall send notice by registered mail to all claimants whose claims have not been allowed or disallowed.

H. B. 109 makes a noticeable departure concerning giving of notice. It provides as follows:

“(a) If any person to whom is directed a citation [to attend probate of will] issued pursuant to Section 50 of this Chapter, or a notice [of sale or mortgage of real estate] issued pursuant to Section 163 of this Chapter, or is a guardian ad litem, does not admit, accept or waive service by an instrument duly acknowledged, or enter his or her appearance, such citation or notice shall be served on such person by personal service at least five days prior to such hearing if he or she can be found in the State of Colorado; if he or she can be found and served outside the State of Colorado, such citation or notice shall be served on such person by personal service or by mail at least ten days prior to the hearing; or if he or she cannot be found and served within or without the State of Colorado, or is unknown, such citation or notice shall be published at least once a week during each of four successive calendar weeks, the last publication being at least ten days prior to the hearing.

“(b) Whenever in this Chapter notice or citation is required to be published at least once a week for four successive weeks or at least once a week during each of four successive calendar weeks, the publication of such notice four times, once during each week of four successive calendar weeks, at least five days elapsing between any two publications, and at least nineteen days elapsing between the first and last publication, shall be a compliance with such requirement for publication.

“(c) Except as in this Chapter otherwise provided or permitted, service and proof of service of any process, notice, citation, writ or order of court, the taking of depositions, and all other procedure under this Chapter, shall be governed by the Colorado rules of civil procedure then in effect with regard to actions in rem; provided, however, that such rules shall not be applicable to proceedings during the administration of an estate for construction or interpretation of a will, determination of the identity or status of a member of a class, or for instructions, but in such cases, notice may be given to such persons and in such manner as the court may direct.”

Under the above provisions, all notices in probate proceedings and proceedings to determine heirship shall be published four times, as that is the clear meaning of subparagraph “b”. Also, it should be observed that the method of serving a citation on probate of will or notice of sale or mortgage of real estate is different from the present law. It should also be noted that where personal service or service by mail cannot be obtained, the published notice of probate of will is not the notice now required, but is the publication of a copy of the citation itself.

Under S. B. 5, effective March 24, 1945, docket fees in all probate proceedings are the same in all counties. The fees are as follows: Small estates under Section 77, Chapter 176, 1935 CSA, \$2.00; estates of \$500.00 or less, \$7.50. In estates of over \$500.00 a docket fee of \$15.00 shall be paid at the time of the filing of the first papers and in addition thereto the following fees shall be paid on filing the inventory: Estates of \$1,500.00 and not more than \$2,500.00, \$10.00; estates of \$2,500.00 and not more than \$5,000.00, \$15.00; estates of \$5,000.00 and not more than \$10,000.00, \$25.00; estates of \$10,000.00 and not more than \$20,000.00, \$35.00; estates of \$20,000.00 and not more than \$30,000.00, \$45.00; estates of \$30,000.00 and not more than \$50,000.00, \$60.00; estates of \$50,000.00 and not more than \$100,000.00, \$85.00; estates of \$100,000.00, one dollar for each \$1,000.00 or fraction thereof; caveats, \$10.00; sale or mortgage of real estate, initial fee, \$5.00; in addition thereto, at the time of the issuance of decree, a fee of \$2.50 for each \$1,000.00 or major fraction thereof if the selling price or principal sum exceeds \$1,000.00, but not to exceed a total fee of \$25.00; foreign wills, \$7.50.

This law also provides for new fees in trust estates, mental cases, copy work and certification.

H. B. 348, effective March 31, 1945, is in substance the uniform revised veterans guardianship act. The principal change from the present law is a provision permitting the court to authorize the purchase of a home for the veteran ward, or his dependent family.

S. B. 42, effective March 14, 1945, provides that upon the death of a lessee of a safe deposit box, prior to the appointment of a personal representative, the box may be entered in the presence of a representative of the inheritance tax commissioner, an officer of the safe deposit company and a person reasonably believed to be an heir at law, devisee or legatee of the decedent. An inventory of the contents of the box should be made in triplicate, and if a will is found in the box, the will shall be removed by the officer of the safe deposit company and forwarded to the proper court.

Under H. B. 759, effective April 11, 1945, when the witnesses to a will cannot be produced, and it appears from an attestation clause which is made prima facie evidence of the facts therein recited, or by other evidence that the will was executed according to law, the will may be admitted to probate on proof of the signature of the testator.

Publication of Legal Notices

The rates for legal advertisements have been increased so that the maximum rate is now 9c a line for the first insertion and 6c a line for subsequent insertions, under S. B. 76, effective March 6, 1945. Under S. B. 316, effective April 3, 1945, the ambiguous provisions of Chapter 136, Session Laws of Colorado, 1943 have been eliminated and rather than publication in the county in which the subject matter is located, the newspaper in which publication shall be made shall be published in the county where such publication is required to be made by law or by the rules of civil procedure or rules of the court applicable thereto. No action shall be commenced after the expiration of six months from the effective date of this act to set aside, invalidate or question any suit or proceeding pending before the effective date of this act in which the legal notice or advertisement shall be published in compliance with the law or rules of civil procedure in effect prior to the effective date of Chapter 136, 1943 Session Laws.

Laws Relating to Real Property

Under S. B. 168, effective March 12, 1945, copies of tax receipts may be procured from the county treasurer upon payment of 50c for a receipt for the current year, or \$1.00 for a receipt for a previous year. Under S. B. 170, effective March 12, 1945, certificates of taxes due can be obtained for a fee of \$1.00. Under S. B. 171, effective March 12, 1945, no lien on real property created by tax certificates or certificates of purchase issued or assigned to anyone other than the county, city, city and county or district levying such tax shall remain a lien for a period longer than fifteen years after the original issuance thereof. No tax deed shall be issued other than to the county, city and county or district levying the tax on account of a tax certificate or certificate of purchase after

fifteen years following the original issuance of the certificate in all unredeemed tax certificates or certificates of purchase upon which tax deed has been issued which are more than fifteen years old shall remain in full force for two years after March 14, 1945. Under S. B. 311, effective April 3, 1945, a deed issued by a county treasurer becomes a source specifically of title under the seven year statute of limitations of Section 146, Chapter 40, 1935 CSA.

Special Laws Relating to Servicemen

Under H. B. 23, effective February 28, 1945, whenever a copy of any public record is required by any agency of the government of the United States to be used in determining the eligibility of any person who shall have served in the armed forces of the United States or any dependent or dependents of any person to participate in benefits for such person or persons made available by the laws of the United States in relation to such services, the official charged with the custody of such public record shall provide the applicant for such benefits, or any person acting in his behalf, or the representative of such agency, with a certified copy of such record without charge. Under S. B. 153, effective February 28, 1945, clerks and recorders of the various counties are directed to record discharges of men and women who served in the armed forces of the United States and who are now or may become residents of Colorado, without charging any fees therefor. Under S. B. 318, effective April 9, 1945, a written finding of actual death made by a duly authorized agent of the United States may be received as evidence of death. Such a certificate purporting to have been signed by a proper officer or employee of the United States is prima facie deemed to have been made by a proper person acting within the scope of his authority. Under S. B. 319, effective April 3, 1945, no agency created by a power of attorney given by a principal who at the time of the execution is or afterwards does become a member of the armed forces of the United States, or a member of the Merchant Marine serving outside the United States, or a person outside the United States in connection with the prosecution of the war, and having an official status, shall be revoked or terminated by the death of the principal as to the agent or any person who, without actual knowledge or notice of the death of the principal, shall have acted in good faith in reliance upon such power of attorney. An affidavit executed by the attorney in fact setting forth that he has not received actual knowledge or actual notice of the revocation or death, shall be conclusive proof of the non-revocation or non-termination of the power. An official listing of "missing" or "missing in action" shall not be interpreted as constituting actual knowledge or actual notice of death.

Service Tax

Under S. B. 2 no service tax is collected for services rendered after February 28, 1945.

Fifteenth Judicial District

The fifteenth judicial district, consisting of the counties of Baca, Bent, Kiowa and Prowers, was created by S. B. 8, effective February 27, 1945.

Notaries Public

Under S. B. 90, effective March 1, 1945, notaries public within any county of this state shall have power to administer all oaths and take affidavits and depositions.

Procedure Before Public Utilities Commission

S. B. 29, effective March 14, 1945, makes several changes in procedure before the Public Utilities Commission. Persons practicing before the commission should examine this act immediately.

Criminal Law

Under S. B. 412, effective March 14, 1945, fugitives from justice in another state when apprehended in Colorado may be released upon bond. Under S. B. 414, effective April 9, 1945, all persons who have been convicted three times of felonies, assaults or conspiracies to commit felonies, are habitual criminals and shall be confined in the state penitentiary for the balance of their natural lives.

Women Jurors

At the last election, women were given the right to serve on juries. Under S. B. 75, effective April 5, 1945, the judge of the court shall have the right to exempt from service persons whose presence is necessary for the care of other persons and those persons upon whom such service would work undue hardship, or who for other good causes request to be excused, and members of a religious sisterhood of any denomination following their professions.

Divorce Procedure

Under S. B. 367, effective April 4, 1945, process, the service thereof, and practice and procedure in actions for divorce, separate maintenance and annulment shall be as may be now or at any time hereafter provided by the rules of civil procedure. No trial of an action for divorce shall be had until after the expiration of thirty days from the filing of the complaint. Any party to a divorce action may demand or waive trial by jury.

Income Taxes

Under H. B. 450, for taxable years beginning after December 31, 1944, the taxpayer may amortize bond premiums. Under H. B. 300, effective April 5, 1945, and S. B. 327, effective April 4, 1945, changes are made in computing depletion. Under S. B. 267 for taxable years beginning after December 31, 1944, members of the armed forces may exclude from gross income compensation received for active service not in excess of \$1,500.00 and all payments made to dependents of such members by the United States Government.

Under H. B. 422, effective for taxable years beginning after December 31, 1944, in the case of a taxpayer other than a corporation, the percentage of the gain or loss upon the sale or exchange of a capital asset shall be 100% if the capital asset has been held for six months or less, and 50% if the capital asset has been held for more than six months. Under the same bill royalties are excluded in all taxable years beginning after December 31, 1944, in the computation of the 2% surtax.

Escheats

Under H. B. 492, effective July 3, 1945, any person, corporation, etc., having money in his hands in a fiduciary capacity and the said moneys are unclaimed or the person to whom the person in possession may lawfully pay the same, or the person who may be entitled thereto is unknown or absent or fails to receive and properly receipt therefor, may pay the moneys to the state treasurer, who must hold them for twenty-one years. All county treasurers who hold any money under the provisions of Section 144 of Chapter 45, 1935 CSA must pay these moneys to the state treasurer within six months of the effective date of the act.

GEORGE STANLEY HARVEY

One of Greater Boston's most distinguished, competent and respected lawyers, George Stanley Harvey, was buried Saturday.

His death recalls a case in which a completely misinformed and outraged public opinion did a grave professional injustice to him.

By law every accused man is entitled to the full protection of legal counsel. If he does not or cannot obtain such counsel himself, the court appoints it.

The court appointed Mr. Harvey as counsel for the notorious Millen brothers.

His completely accidental connection with two of the vilest criminals in Massachusetts history did him irreparable damage as a lawyer.