



STATE OF KANSAS

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March 23, 1987

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ATTORNEY GENERAL OPINION NO. 87- 55

William L. Navis
Republic County Attorney
Republic County Courthouse
Belleville, Kansas 66935

Re: Automobiles and Other Vehicles--General Provisions;
 Registration of Vehicles--Transfer of Ownership;
 Owner Deceased

Probate Code--Probate Procedure--Creditors' Claims

Synopsis: Because of the specific methods prescribed by the Kansas probate code for dealing with unsecured claims, and the assurances given for their payment if properly exhibited, it is our opinion that the more general provisions of K.S.A. 1986 Supp. 8-135 do not authorize a different method for assuring payment of specific debts. Therefore, unless a mortuary, physician or hospital has a lien or encumbrance upon the vehicle of a decedent prior to his death, K.S.A. 1986 Supp. 8-135 does not, in our judgment, allow for the creation of such a lien subsequent to the date of the decedent's death except as provided in the probate code. Cited herein; K.S.A. 1986 Supp. 8-135; K.S.A. 59-709; 59-1301; K.S.A. 1986 Supp. 59-1302; K.S.A. 59-1405; 59-1408; K.S.A. 1986 Supp. 59-1503; K.S.A. 59-2219; 59-2220; 59-2221; K.S.A. 1986 Supp. 59-2239.

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Dear Mr. Navis:

As attorney for Republic County, Kansas, you have requested our opinion regarding certain procedures of the Kansas Department of Revenue pursuant to K.S.A. 1986 Supp. 8-135. Specifically, you ask:

"1. Does K.S.A. 8-135, as amended, create a lien on vehicles owned by a decedent in favor of hospitals, physicians and mortuaries; and

"2. If such a lien is created, does it extend to service providers other than hospitals, physicians and mortuaries?"

In your request letter, you give the following information:

"Based on the authority of K.S.A. 8-135, the Kansas Department of Revenue has promulgated a form, #TR-83. The form is used when the owner of a vehicle dies, and the car is transferred after death. The instructions on the back of the form read as follows:

"The attached decedent affidavit must be completed by the heir claiming any ownership of any vehicle which is currently titled in the deceased's name, with the exception of one exempt vehicle to which the surviving spouse is entitled. Such heir must complete the reverse side of this form in full, and have the hospital, physician and mortuary complete the attached affidavits. After the decedent's affidavit and supporting documents have been completed, they should be presented to the County Treasurer, and application for a new title should be made.'

"Apparently, the statutory authority relied on for this instruction is K.S.A. 8-135, as amended. That statute does

not expressly provide for a hospital's, physician's or mortuary's lien on a vehicle. The administrative procedure required to complete form TR-83 compels payment of these bills as a condition precedent to issuance of a new certificate of title, and is tantamount to creating, administratively a lien, without the benefit of an authorizing statute."

You also note that physicians, mortuaries and hospitals, as well as any other creditor, have recourse for realizing unpaid decedents' debts by initiating probate pursuant to K.S.A. 59-2221.

K.S.A. 1986 Supp. 8-135(c)(1) provides, in pertinent part:

"An application for certificate of title shall be made by the owner or the owner's agent upon a form furnished by the division and shall state all liens or encumbrances thereon, and such other information as the division may require. Notwithstanding any other provision of this section, no certificate of title, other than a duplicate title, shall be issued for a vehicle having any unreleased lien or encumbrance thereon, unless the transfer of such vehicle has been consented to in writing by the holder of the lien or encumbrance. Such consent shall be in a form approved by the division."

The question thus becomes whether physicians, hospitals, and mortuaries, as creditors, possess a lien or encumbrance on the vehicle as property of the decedent's estate.

The Kansas probate code, K.S.A. 59-101 et seq., provides that unsecured creditors of a decedent's estate are barred from payment unless 1) a petition is filed for the probate of the decedent's will pursuant to K.S.A. 59-2220 or for the administration of the decedent's estate pursuant to K.S.A. 59-2219 within six months after the death of the decedent, and 2) the creditor has exhibited a demand against the estate within four months after the date of the first published notice to creditors. K.S.A. 1986 Supp. 59-2239(1). Any

person interested in the estate, including creditors, may petition for probate or administration. K.S.A. 59-2221. The petitioner for administration or probate must, within ten days after filing such petition, publish a notice to creditors, providing the petition is filed within the period of time prescribed by K.S.A. 1986 Supp. 59-2239(1) for the timely exhibit of creditors' claims. K.S.A. 59-709.

Thus, a creditor's claim against a decedent's estate may be barred in two separate ways under K.S.A. 1986 Supp. 59-2239(1). If proceedings for the administration or probate of the decedent's estate are not initiated within six months after the date of death, all unsecured claims will be barred. Even if a petition for administration is timely filed, a creditor's claim will be barred if he or she does not also file a separate petition for allowance of the claim within four months of publication of the notice to creditors. See In re Estate of Jones, 3 Kan. App.2d 63 (1979). An exception to this rule is if the provisions of the testator's will require payment of a demand exhibited after the four months have passed. K.S.A. 1986 Supp. 59-2239(1).

If it appears that the estate is insolvent, i.e. if the assets of the estate are insufficient to pay in full all demands allowed against it, K.S.A. 59-1301 provides for payment in the following order:

"First class, the expenses of an appropriate funeral in such amount as was reasonably necessary, having due regard to the assets of the estate available for the payment of demands and to the rights of other creditors. Any part of the funeral expenses allowed as a demand against the estate in excess of the sum ascertained as above shall be paid as other demands of the fourth class.

"Second class, the appropriate and necessary costs and expenses of administration and the reasonable sums for the appropriate and necessary expenses of the last sickness of decedent, including wages of servants.

"Third class, judgments rendered against decedent in his or her lifetime, all

judgments or liens upon the property of the decedent shall be paid in the order of their priority.

"Fourth class, all other demands duly proved. . . ."

Reasonable mortuary, physician and hospital debts would probably fall within the first or second priority. The debts of the estate are to be paid from the estate, and the order in which the assets of the estate are to be appropriated for payment of such debts, unless the will provides a different order of appropriation, is set forth in K.S.A. 59-1405.

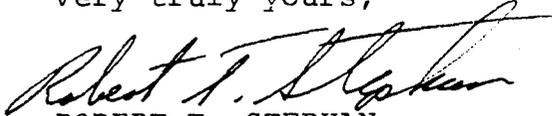
If the estate is solvent, the administrator or executor may, after the expiration of the four months allowed for the filing of creditor's claims or earlier if ordered by the court, proceed to pay the debts of the estate allowed by the court according to their classification. If the court orders payment before the four months have passed, it may order any creditor receiving payment to post bond or security to refund any part of such payment necessary to make payment on other allowed debts. K.S.A. 1986 Supp. 59-1302.

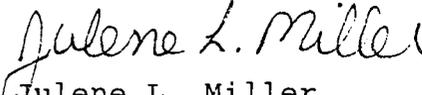
K.S.A. 1986 Supp. 59-1503 provides the time for distribution of the estate. If, prior to final settlement, the estate appears to be solvent, the court may order the administrator or executor to pay legacies or distribute intestate shares. Generally the legatee or heir must furnish a bond or security to refund his or her due proportion of any demand which may afterward be exhibited and allowed against the estate, though the court may waive this requirement. K.S.A. 1986 Supp. 59-1503. If no redelivery bond or security has been furnished, the legatees or heirs nevertheless remain liable to refund part or all of the property distributed if necessary for the payment of demands. K.S.A. 59-1408.

Pursuant to K.S.A. 1986 Supp. 59-2239(1), an unsecured creditor shall not have any claim against or lien upon the property of a decedent unless petitions for probate or administration and exhibition of the claim are timely filed. Creditors with claims allowed by the court are protected by the provisions of K.S.A. 59-1301, K.S.A. 1986 Supp. 59-1302, K.S.A. 59-1405 and K.S.A. 1986 Supp. 59-1503. Because of the specific methods prescribed by the Kansas probate code for dealing with unsecured claims and the assurances given for their payment if properly exhibited, it is our opinion that the more general provisions of K.S.A. 1986 Supp. 8-135 do not

authorize a different method for assuring payment of specific debts. If it were otherwise, a creditor barred from collecting a debt pursuant to the probate code could nevertheless prevent an heir from claiming property to which he is entitled through probate. Therefore, unless a mortuary, physician or hospital has a lien or encumbrance upon the vehicle of a decedent prior to his death, K.S.A. 1986 Supp. 8-135 does not, in our judgment, allow for the creation of such alien subsequent to the date of the decedent's death except as provided in the probate code. Since our response to your first inquiry is in the negative, we need not address your second inquiry.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm