

Opinion No. 195

**Estates—Inheritance—Citizens of Italy
and Non-Residents of the United
States—Chapter 104,
Laws of 1939.**

HELD: Since the laws of Italy permit persons residing in the United States to inherit property left by deceased persons in Italy no disability on the part of citizens of Italy and non-residents of the United States arises by virtue of Chapter 104, Laws of 1939, to inherit property of estates in Montana.

February 2, 1940.

To the District Courts of the
State of Montana:

Chapter 104, Laws of 1939, prohibits the inheritance of estates in Montana on the part of citizens and residents of a foreign country, unless, reciprocally, such foreign country permits the inheritance of estates in such country on the part of persons residing in the United States.

We have been advised by the Royal Italian Consul for the Northwest, as follows:

“Article III of the Italian Civil Code expressly states: ‘The foreigner is admitted to benefit by the civil rights attributed to citizens.’ This provision of the Italian Code, which goes back to 1865, has given to foreign citizens every right recognized to its nationals without even conditioning such a recognition to a reciprocity on the part of other countries.

“A foreign citizen has, therefore, under the general principles of the Italian Civil Code referred above, the right to be an heir and to receive legacies and the Italian jurisprudence has, since 1865, recognized such a right. * * *

“In conclusion, I may state that the Italian law now, as always, recognizes the right of foreign citizens and in particular of American citizens to be heirs and to receive legacies and that the Italian Depart-

ment of Foreign Exchange allows the transmission to the United States of money and other distributive property left to American citizens by Italians, resident in Italy or in the United States.

"I would be grateful if your Department would kindly advise the Court of the State of Montana of the above-stated Italian policy."

In answer to an inquiry from this office the Department of State, Washington, D. C., has advised us of a dispatch to the Secretary of State, dated March 23, 1929, from the American Embassy at Rome, to the following effect:

"In its Note Verbale of January 2, 1939, the Royal Ministry referred to Italian legislation on inheritance, on real and personal property, but limited its reply to the subject of estates of American citizens deceased in Italy. A request for further information was therefore addressed to the Ministry, which has now informed the Embassy in a Note Verbale dated March 18, 1939, that American citizens may take property or the proceeds thereof by descent or inheritance from persons of any nationality dying in Italy."

Copies of the Notes Verbale above referred to were also sent to the Secretary of State and by the latter forwarded to, and are on file in this office.

On this information, it is our opinion that the laws of Italy permit persons residing in the United States to inherit property left by deceased persons in Italy and that therefore no disability on the part of citizens of Italy and non-residents of the United States arises by virtue of Chapter 104, Laws of 1939, to inherit property of estates in Montana.