

Opinion No. 189.

**Title—Transfer of Title—Motor  
Vehicles—Deceased Persons—Registra-  
tion of Motor Vehicles.**

Held: There is not a transfer of title to a motor vehicle between a deceased and his estate and a new certificate of title running to the estate need not be secured in order to secure license plates.

March 10, 1944.

Mr. John E. Henry  
Registrar of Motor Vehicles  
Deer Lodge, Montana

Dear Mr. Henry:

You have requested an opinion of this office on the following question:

“Upon the death of the owner of a motor vehicle should you re-register the vehicle in the name of the estate of John Doe, without a transfer of ownership, or should you demand a transfer from the deceased person, by his personal representative to the estate?”

Your inquiry raised the question of passing of title to property on death.

Section 7040, Revised Codes of Montana, 1935, reads as follows:

“Testamentary dispositions, including devises and bequests to a person

on attaining majority, are presumed to vest at the testator's death."

Section 7072, Revised Codes of Montana, 1935, reads as follows:

"The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by that court for the purposes of administration."

The Montana Supreme Court in interpreting these statutes in *In Re Clark's Estate*, 105 Mont. 401, 74 Pac. (2nd) 401, at page 406 of the Pacific Reporter, holds:

"The property of a testator, including devises and bequests, vests in the devisees and legatees at the moment of the death of the testator. Section 7040 Id; *In re Estate of Deschamps*, 65 Mont. 207, 212 P. 512; *In re Connolly's Estate*, 73 Mont. 35, 235 Pac. 408; *Rumney v. Skinner*, 64 Mont. 75, 208 P. 895; *Hinds v. Wilcox*, 22 Mont. 4, 35 P. 355; *Gelsthorpe v. Furnell*, 20 Mont. 299, 51 P. 267, 270, 39 L. R. A. 170. Upon the death of an intestate the title to all his property, both real and personal, passes to the heirs. Sec. 7072, Rev. Codes; *Hoppin v. Long*, 74 Mont. 558, 241 P. 636; *Lamont v. Vinger*, 61 Mont. 530, 202 P., 769. In either instance upon the death, possession of the property passes to the personal representative subject to the control of the district court for administration purposes."

See also in the same case at page 412 of the 74 Pacific Reporter as follows.

"We have demonstrated that both by statute and decision we are committed to the rule that upon death all of the property of the deceased, whether real or personal, vests immediately in those who are entitled by will or under the law to succeed to it. . . . The property of the estate is, during the course of administration, in the custody of the court, but the court gives no title in its decree of distribution to the successors of the deceased, for that is vested in them by law."

In accordance with the above quoted statutes and cases, the title to the motor vehicle passes immediately upon the

death to the heirs. The administrator or executor has no title to the same and of course the estate of the deceased person, being represented by the administrator or executor, has no title. There is no transfer between the deceased and the estate of the deceased. A new certificate of title is only to be issued on the transfer of the deceased and therefore if a new certificate is to be issued it should be issued to the heirs of the deceased. To issue a certificate to the heirs, whom, of course, might be unknown, would be a source of trouble in the event it developed that the vehicle had to be sold in the course of administration of the estate.

Under the foregoing statutes, cases and reasoning, I do not see the justification for demanding or insisting that a new certificate be issued from the deceased to the deceased estate, as for all practical purposes the deceased and his estate are one and the same and there has been no transfer. It seems to me that as long as the estate is in the process of administration that the vehicle should be carried in the name of the deceased, for instance, as *John Jones, deceased, c/o John Smith, Executor of the Last Will and Testament of John Jones, deceased*. The executor should not request a new certificate be issued in the name of "The Estate of John Jones" and the Registrar should not insist that such a new certificate be made. The books of the registrar should merely show that the owner is dead; demand might be made for a death certificate if the same is felt necessary. The portion referring to the executor or administrator would merely be a matter of address, for such personal representative would be the person in whose hands the vehicle would be, subject to the right of the heirs and the court.

In support of my reasoning I call your attention to paragraph (3), Section 2, Chapter 148, Laws of 1943, which amends Section 1758.2, Revised Codes of Montana, 1935, which paragraph reads in part as follows:

"(e) In the event of a transfer of any title or interest of an owner of the legal title or owner in and to a motor vehicle registered under the provisions of this act, **as upon inheritance, devise or bequest**, order in bankruptcy or insolvency, execution sale, repossession upon default

in the performance of the terms of a lease or executor sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator . . . or successor in interest of the person whose title or interest is so transferred, shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure affecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner . . . shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. . . ." (Emphasis mine.)

It seems from a reading of said paragraph (e) that the legislature intended there need not be any transfer from the deceased's estate or to the administrator or executor, but that the administrator or executor upon sale, or decree of distribution, shall transfer the title from the deceased person to the heirs or legatees, or purchaser. To interpret this statute so as not to regulate such situations would cause considerable difficulty. If the transfer of title in the event of death is to be strictly followed, it would necessitate a transfer to the heirs or legatees, then a transfer from them to any purchaser in the event of administration sale or to the final distributee in the event of assignment before distribution. This latter procedure may be technically correct, but the purpose of the registration statutes are generally for the pro-

tection of the titles to motor vehicles and for receiving tax for the support of our roads, when the same are used on our roads. Therefore, as the motor vehicle is in the possession of the personal representative, and such personal representative is responsible for the same, both to the heirs or legatees and the court, there is no more than the ordinary chance of theft of the motor vehicle and if used, little chance of escaping the use tax represented by the license tax.

Therefore, it is my opinion that upon the death of the owner of a motor vehicle, there is no necessity for the issuance of a new certificate of title, or a change in the registration name, other than the designation of the owner, as deceased until the final distribution of the estate or until sold by the personal representative in the course of administration, at which time the title shall be transferred and a new certificate shall be issued to the distributee or the administration sale purchaser. The motor vehicle may be carried on the books of the registrar either as "John Jones, deceased," or the name of the "Estate of John Jones, deceased," both being one and the same, and regardless of how carried a transfer has not been made. Technically there may be a transfer from the deceased to the heirs or legatees upon death, but for all practical purposes under the law pertaining to registration of motor vehicles there is not a transfer until disposed of by the estate, either by distribution or sale. In any event there is no transfer from the owner to the owner as a deceased person, or to the estate of the deceased. Any change in the registration from the owner to the owner as a deceased or to the estate of the deceased is merely for the information of the registrar; the property is for all practical purposes within the jurisdiction of the court where the probate is filed and although strictly speaking title may have passed, possession does not pass to the new legal owner, until distribution or sale, and the estate of a deceased is one and the same as the deceased as far as the creditors or third parties are concerned.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General