

OPINION
47-126

November 3, 1947 (OPINION)

ESTATES OF DECEDENTS

RE: Inventory - Necessity for Approval of - Homestead and Exemptions
Must Be Set Aside

Re: Section 30-1607 of the North Dakota Revised Code of 1943

Your letter of October 28 concerning the above section has been received and sent to my desk.

It is my opinion that the answers to your specific questions must in all cases be "yes." The words in Section 30-1607 in the first sentence, to-wit: "concerning the homestead and other exempt property" is rather misleading and I cannot satisfy myself just exactly what is meant thereby. However, it is my opinion that when the inventory is returned to the court a hearing must be had before the court can determine whether or not to approve the inventory. The purpose of the hearing is clear, it seems to me to give creditors as well as heirs a right to object or make additions to the inventory. The purpose of the inventory is to make provision for such objections and amendments to the inventory. The second sentence in Section 30-1607 confirms me in this opinion for it provides that, "At the hearing, the court may confirm the proceedings as to the inventory and appraisalment." If there are survivors under the law who are entitled to a homestead interest, it is my opinion that the court must set aside a homestead whether or not a petition has been filed and must also, if there are persons entitled thereto, set aside other exempt property as provided by other sections of the statute. Otherwise by failing to make a separate application for the setting apart of homestead or exempt property the entire property of the estate might be dissipated in the payment of debts and the parties entitled thereto left without the resources for their sustenance intended by the statutes providing for a homestead and other exemptions. It is my opinion, therefore, that all your questions must be answered in the affirmative.

As far as I am able to determine, the provisions of this section which are the first part of Section 8726 of the Compiled Laws of 1913 have never been construed.

NELS G. JOHNSON

Attorney General