

**OPINION  
49-97**

January 31, 1949            (OPINION)

JOINT TENANTS

RE: Authority of County Court

Re: Section 57-3729 of the 1943 Revised Code.

Your letter of January 28, 1949, asking our opinion upon the following situation, has been received.

You are particularly interested in joint tenancies when one of the joint tenants or owners is deceased. If the county court can determine without a regular probate proceeding that there would be no estate tax due, would it be proper for the county court to make an ex parte order directing the depositaries to deliver such securities to the surviving joint owner.

The office, as far as our records show, has never been asked this question.

It is apparent that, under section 57-3717 of the 1943 Revised Code, the county court may cause a preliminary inventory of an estate to be made to determine the probability of an estate tax being due; and from section 57-3718, it appears that the county court may make an order exempting any estate from payment of estate tax when it appears that such estate is so exempt. It may be that in the ordinary case an administration should be had, but there are many cases where it is plainly apparent to the court that the entire estate is exempt from taxes and claims of creditors. In such cases it would seem entirely unnecessary to burden such estate with the expense of administration. In such a case, it is our opinion that the court would be authorized by section 57-3718 to make an order exempting such estate from payment of any estate tax.

The evident purpose of section 57-3729 is to insure payment of estate tax upon the decedent's interest in the jointly-owned property which may have been in the safety deposit box at the time of his decease. The joint property, of course, becomes the property of the surviving joint-tenant or tenants, so he or they are entitled to possession subject to insurance as provided by this section that any estate tax due from the estate of the deceased will be paid. If it is apparent to the county court that no such tax is due, then, in our opinion, the county court is authorized by section 57-3729 to order a delivery of jointly-owned property in a safety deposit box to the surviving joint-owner or owners.

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Attorney General