

VOTE 13. - OFFICE OF THE ATTORNEY GENERAL

19. Intestate Estates and Dormant Funds

Under Section 73 of the Succession Act, 1965 the estates of persons who die intestate and with no known next-of-kin fall to be taken by the State as ultimate intestate successor. The Attorney General deals with such cases by instructing the Chief State Solicitor to obtain letters of administration from the High Court. When the administration of the estate has been finalised, the proceeds are paid into the Intestate Funds Deposit Account, which is under the control of the Minister for Finance and audited by me. Fees in respect of this administration are met by the estates and brought to account as appropriations in aid in the Vote.

In response to my inquiries the Accounting Officer stated in May 1996 that generally speaking, ownerless property comes to the attention of the State authorities from the local Gardaí and, in a minority of cases, through a local solicitor. Most intestate property falls into two general categories - land/buildings and moneys in bank accounts or other financial institutions. As regards the former, he did not see it as the Attorney General's function to ascertain what land is ownerless and what is not. As regards moneys left unclaimed in financial institutions, it was his understanding that this had been the subject of various proposals for legislation from time to time but none of these had resulted in any legislation to deal with the matter.

In September 1996, during the course of audit of a Health Board, it was noted that the Board held approximately £0.5m in dormant balances, representing funds of deceased patients who had died intestate and for whom no next-of-kin could be traced. Legal opinion obtained by the Board indicated that these dormant balances may be due to the State as ultimate intestate successor. It was also noted that balances of some £2.6m relating to discharged or deceased patients were held by the eight Health Boards, some of which may have been due to the State.

As it appeared that all intestate estates where there was no next-of-kin were not being brought to the attention of the Office of the Attorney General, I sought the observations of the Accounting Officer and he informed me that

- It may be that an obligation could be placed on Health Boards to notify the State of unclaimed patients' accounts by way of legislation or statutory instrument. It was very likely that there are other balances in financial institutions lying dormant but at present these institutions have no obligation of disclosure to the State of these balances and any proposed legislation to do so would require close constitutional scrutiny. There may be economic considerations as to whether this exercise would be worthwhile.
- In the normal course, potential intestate estates come to attention where nobody comes forward to make funeral arrangements for the deceased person. It is also the case that smaller estates are discovered from time to time when an occupant of land owned by a person who is not survived by next-of-kin makes an application to the Land Registry for registration and is informed by the latter of the interest of the State. Frequently the interest of the State will have been disposed of by virtue of the Statute of Limitations, 1957. Outside of the present procedures the Attorney General has no responsibility whatever in relation to intestate estates which are not brought to his attention, or of which he is unaware. There is no other State authority responsible for ensuring that such information is brought to the attention of the Attorney General.

- Any review of the effectiveness of the present arrangements has to have regard to what checks and balances are in place to ensure that the State gets its entitlement but it is difficult to envisage a system that would bring all intestate estates to the attention of the State with any degree of haste or efficiency.
- While the present arrangements do not ensure immediate notice on the death without next-of-kin of a property owner, he did not think that section 73 of the Succession Act, 1965 was intended as a large benefit to the State. Estates are relatively modest in size and will, over time, become even less significant. The change in the law effected by the Status of Children Act, 1987 will have the effect of reducing the likelihood of property reverting to the State on the grounds that it is ownerless. The Chief State Solicitor's Office has noticed in recent years a trend that, due to the growth of genealogical surveyors, next-of-kin are being discovered in many countries. While the State must intervene if required in the early stages it is now possible and quite probable that the number of intestate estates will become less and less.