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ESTATE—PROBATE COURT MAY RELIEVE FROM ADMINISTRATION  
WHEN—AFFIDAVIT OF NEXT OF KIN SHOULD BE ACCEPTED BY  
COUNTY AUDITOR AND COUNTY RECORDER IN TRANSFERRING  
TITLE THERETO.

*SYLLABUS:*

*A probate court may relieve an estate of less than five hundred dollars from administration as provided in Section 10509-5, General Code. The necessary affidavit provided for in Section 2768 of the General Code may be made by one or more of the next of kin and the county auditor and county recorder should accept such affidavit in transferring the title to the real estate from the deceased to the next of kin or heirs entitled to the real estate, in estates in which administration has been dispensed with.*

COLUMBUS, OHIO, June 2, 1933.

HON. WILLARD D. CAMPBELL, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date in which you request my opinion upon the following:

“Our probate court has asked my opinion on a question arising under the new probate code, on which I desire your opinion. Question is as follows:

Section 10509-5, General Code, provides that the court may make an order relieving estates of less than \$500.00 from administration.

Section 10509-102, General Code, provides for transfer of real estate, either testate or intestate succession, and that ‘the administrator or executor shall file in the probate court an application \* \* \* requesting certificate of transfer of such real estate,’ etc.

And this latter section is intended to supersede former Section 10526, General Code, and seemingly now is the directed method of transfer of real estate of deceased persons.

QUESTION: Can the probate court dispense with administration under Section 10509-5, and in the order therefor provide for transfer of any small amount of real estate of said estate? Or is it necessary in all cases where real estate is to be transferred to have administration of estate in order that the ‘administrator or executor’ may file the application?

There would seem to be no question that Section 10509-5 is intended to cover both personal and real property, but how can such real property be transferred without administration in view of Section 10509-102? And do the provisions of the latter named section defeat the provisions of the first named section when there is real estate?

In Section 2768 there is a provision made for title passing by law of descent accomplished by affidavit presented to the auditor of the county. This section is inconsistent with the aforementioned sections and their consistency with each other is a matter of conjecture, and hence I should like to have an opinion upon the matter.”

Section 10509-5, General Code, reads as follows:

“When satisfied that an estate is of less value than five hundred dollars, the court may in its discretion upon application and proper showing, make an order relieving such estate from administration and directing payment to the proper persons. Such order shall have the same effect as administration proceedings in freeing land in the hands of an innocent purchaser for value from possible claims of creditors.”

This section provides that where an estate of a deceased person is of less value than five hundred dollars, the court upon application and a proper showing, may in its discretion make an order relieving such an estate from administration. To procure such an order, it is necessary that an application be made to the proper probate court, setting forth the name of the deceased, the date of death, an itemized statement of the assets of the estate, as well as the names of the legal heirs and next of kin of the deceased and such information presented to the court as will enable the court to be satisfied that such estate does not amount to more than five hundred dollars and that it will be for the best interests of the estate and those interested in it, to save the expense of administration and use the assets of the estate in paying the debts and making distribution to those entitled to it.

Section 2768, General Code, in so far as it is not inconsistent with Section 10509-102, General Code, enables one or more of the heirs of the deceased or two or more persons who know the facts, to make the necessary affidavit to enable the county auditor and county recorder to transfer the real estate from the deceased to the next of kin or heirs of the deceased. Section 10509-102, General Code, does not require an application in all instances to be made by an administrator or executor in order to transfer title of real estate belonging to the deceased person, but is only required in such instances as there are administrators or executors already appointed. The question as to whether Section 2768 of the General Code was repealed by implication by the enactment of Section 10509-102 was fully discussed in Opinion No. 3842 of my predecessor, found in Opinions of the Attorney General for 1931, Vol. III, p. 1490. Such opinion held that Section 2768 of the General Code was not repealed by implication by the enactment of Section 10509-102 of the General Code, and renders inoperative only that part of Section 2768 which is inconsistent with Section 10509-102, General Code.

In specific answer to your question, it is my opinion that the proper probate court may, under Section 10509-5, General Code, dispense with administration of an estate amounting to less than five hundred dollars and it is not necessary that an administrator be appointed to make the transfer of the real estate. An affidavit of transfer can be made under Section 2768 of the General Code and the county auditor and county recorder should accept such affidavit and transfer the property as provided therein.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*