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WILLS-VALIDITY OF DEVISE TO UNITED STATES GOVERNMENT

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WILLS—VALIDITY OF DEVISE TO UNITED STATES GOVERNMENT—A California testator bequeathed “all I own and possess to the United States Government.” His heirs sought to have the disposition set aside, claiming the federal government could not be a beneficiary under the California probate statute¹ which permitted testamentary dispositions to be made to the state, counties, municipal corporations and certain others. From the order denying their petition for distribution, the heirs appealed. *Held*, reversed. The word “state” as used in the probate statute does not include the United States. *In re Burnison's Estate*, (Cal. App. 1948) 196 P. (2d) 822.

It is held, almost without exception, that a person has no natural or constitutional right to make a will, but is given this privilege by the state strictly as a

¹ Cal. Probate Code (1944) §27. “A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking property. . . . No other corporation can take under a will, unless expressly authorized by statute.”

matter of grace.² This is based on the theory that when one dies his ownership ceases, and the state, as successor to his property, may regulate its disposition in any manner.³ While most courts adhere to this broad principle, they are nevertheless hesitant to invalidate any particular disposition unless it clearly conflicts with some legislative mandate. Numerous decisions may be found upholding bequests which conform to legislative requirements, even though obviously in conflict with what are generally considered to be the moral obligations of the testator.⁴ Thus it has been held, in absence of any statutory restrictions, that a bequest to the federal government is valid.⁵ On the other hand, if the court feels that the provisions of a particular will conflict with legislative requirements, the wishes of the testator will be subordinated to the superior authority of the state. Accordingly, a New York statute limiting beneficiaries to persons capable by law of holding real estate, or to corporations authorized by their charter or by statute to take by devise, was interpreted to forbid the disposition of property to the federal government.⁶ Although the statute had previously been interpreted to the contrary,⁷ the court held that the federal government was precluded from taking in the absence of an express permissive provision. Assuming, as the California court did, the power of the state to determine the course and manner of succession, it does not necessarily follow that the disposition in the principal case contravened the provisions of the probate code. The statute in controversy had previously been interpreted in a manner which would have permitted the federal government to accept the bequest in the present case.⁸ By following that interpretation, the wishes of the testator might have been fulfilled. While the problem was not involved here, the privilege of a testator to name the objects of his bounty is a valuable one and often is the only assurance to aged persons that they will receive proper care

² 68 C.J., Wills § 6; 28 R.C.L. 67 (1921); 1 PAGE, WILLS, 49 (1941); *Irving Trust Co. v. Day*, 314 U.S. 556, 62 S.Ct. 398 (1942). The Wisconsin courts alone have recognized an inherent right to dispose of property by will. 1 PAGE, WILLS, 49 (1941); *Will of Rice*, 150 Wis. 401, 136 N.W. 956 (1912).

³ 2 BLACKST. COMM., Cooley's ed., 10 (1899).

⁴ ROOD, A TREATISE ON THE LAW OF WILLS, 2d ed., §413 (1926); *In re Donovan's Estate*, 114 Cal. App. 228, 299 P. 816 (1931); *Combs v. Combs*, 271 Ky. 543, 112 S.W. (2d) 989 (1938).

⁵ *Dickson v. United States*, 125 Mass. 311 (1878).

⁶ *United States v. Fox*, 94 U.S. 315, (1877), affg. *In the Matter of Will of Fox*, 52 N.Y. 530 (1873).

⁷ *Levy v. Levy*, 40 Barb. 585 at 615 (N.Y. 1863): "I also concur . . . in holding that our statute prohibiting corporations from taking by devise unless expressly authorized, etc., was not intended to apply either to the general, or the state governments, and does not prevent the government of the United States from taking under the devise."

⁸ *Estate of Hendrix*, 77 Cal. App. (2d) 647, 176 P. (2d) 398 (1947). In sustaining the validity of a bequest to the United States Veterans Administration as a bequest to the United States Government, the court said, "In declaring the policy of section 27, the Legislature could scarcely have entertained a purpose to allow property to be taken by the states and by counties and local public corporations and to deny the privilege to the United States Government, through which property would be put to beneficial use upon a much larger scale." *Id.* at 652.

from otherwise disinterested relatives.⁹ It would thus seem undesirable to establish precedent for defeating a testator's wishes when they do not clearly conflict with legislative requirements. One may seriously question whether such a conflict presented itself in the instant case.

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⁹ *Salinas v. Garcia*, (Tex. App. 1911) 135 S.W. 588.