

1956

# In the Matter of the Estate of Sam N. Manatakis : Brief of Appellant

Utah Supreme Court

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H. G. Metos; Attorney for Appellant;

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IN THE SUPREME COURT

of the

STATE OF UTAH

FILED

JUL - 3 1956

In the Matter of the Estate  
of

SAM N. MANATAKIS, sometimes  
known as Sam Manatakis, and as  
Sotiros N. Manatakis and as Sam  
Nekas,

*Deceased.*

Clerk, Supreme Court, Utah

BRIEF OF APPELLANT

H. G. METOS,

*Attorney for Appellant*

# INDEX

	Page
STATEMENT OF THE CASE .....	1
STATEMENT OF POINTS .....	2
ARGUMENT:	
Points 1, 2, 3 and 4:	
Evidence, findings and conclusions are insufficient to support the decree distributing the residue of decedent's estate to Salt Lake County for the use and benefit of Salt Lake County Hospital in that said will does not definitely designate a legatee or sufficiently define the object of the use of the monies to be distributed. ....	3
Point 5:	
Salt Lake County does not have power to receive testamentary dispositions. ....	10
CONCLUSION .....	12

## TABLE OF CASES CITED

Augusta v. Walton, 1 S.E. 214.....	11
Board of Trustees of M.E. Church v. May, 99 A. 1093.....	9
Dailey v. New Haven, 22 A. 945.....	11
In re Hopes Estate, 98 A. 622.....	8
In re Zilke's Estate, 1 Pac. 2nd 475.....	5

## STATUTES

16-6-8 U.C.A. 1953.....	11
17-5-44 U.C.A. 1953.....	12
53-30-3 U.C.A. 1953.....	11
64-3-2 U.C.A. 1953.....	11
64-2-18 U.C.A. 1953.....	11
64-4-1 U.C.A. 1953 .....	11
64-7-4 U.C.A. 1953 .....	11
74-1-4 U.C.A. 1953.....	11
74-2-2 U.C.A. 1953.....	4

## TEXTS

43 C.J.P. 1337.....	11
Page on Wills, Sec. 54.....	4

# IN THE SUPREME COURT

## of the

### STATE OF UTAH

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In the Matter of the Estate  
of  
SAM N. MANATAKIS, sometimes  
known as Sam Manatakis, and as  
Sotiros N. Manatakis and as Sam  
Nekas,  
*Deceased.*

No. 8534

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#### BRIEF OF APPELLANT

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#### STATEMENT OF THE CASE

This is an appeal by the Walker Bank and Trust Company, Administrator of the estate of the above named decedent, from a decree ordering the administrator to distribute the residue of the estate to Salt Lake County in trust and for the use and benefit of the Salt Lake County Hospital located at 2033 South State Street, Salt Lake City, Utah.

The above named decedent died on April 18, 1955 at Salt Lake City, Utah and in his safety deposit box there was found two olographic Wills, one being undated

has been disregarded, and the one under which the decree was entered by the trial court reads as follows:

"February 26, 1954

**"WILL**

"All the money I have in my name Sam Manatakis or Sam Nekas I leave to the public hospital or County Hospital for the poor.

(signed) SAM MANATAKIS - SAM NEKAS"

There was no evidence offered at the hearing except a stipulation (R. 10-11) entered into by the parties to the effect that the records of the Salt Lake County Hospital do not show that the decedent at any time was a patient at said hospital and that he died at St. Mark's Hospital. Pursuant to such stipulation and in considering said Will the trial court entered the judgment as aforesaid ordering distribution of the residue of said estate to Salt Lake County for the use and benefit of its hospital.

**STATEMENT OF POINTS**

1. The evidence is insufficient to support the findings of the Court that under the Will of said decedent Salt Lake County Hospital was named as the sole beneficiary of the estate of said decedent.

2. The Findings and Conclusions are insufficient to support the decree that the residue of the estate of the decedent was left to Salt Lake County a body politic and corporate of the State of Utah, and be held in trust

for the use and benefit of the Salt Lake County Hospital located at 2033 South State Street, Salt Lake City, Utah.

3. The legatee named in the Will is indefinite, ambiguous and uncertain, and the Will is therefore void for want of certainty.

4. That the Will is indefinite, ambiguous and uncertain in designating a legatee and in defining the object and use of the monies to be distributed.

5. That Salt Lake County does not have power to receive testamentary dispositions.

## ARGUMENT

### POINTS 1, 2, 3 and 4

EVIDENCE, FINDINGS AND CONCLUSIONS ARE INSUFFICIENT TO SUPPORT THE DECREE DISTRIBUTING THE RESIDUE OF DECEDENT'S ESTATE TO SALT LAKE COUNTY FOR THE USE AND BENEFIT OF SALT LAKE COUNTY HOSPITAL IN THAT SAID WILL DOES NOT DEFINITELY DESIGNATE A LEGATEE OR SUFFICIENTLY DEFINE THE OBJECT OF THE USE OF THE MONIES TO BE DISTRIBUTED.

For the purpose of comparison decedent's Will is again set forth:

"February 26, 1954

### "WILL

"All the money I have in my name Sam Manatakis or Sam Nekas I leave to the public hospital or County Hospital for the poor.

(signed) SAM MANATAKIS - SAM NEKAS"

The trial judge in making and entering the court's findings and conclusions adjudged the Will to read as follows:

### *WILL*

All the money I have in my name, Sam Manatakis or Sam Nekas, I leave to Salt Lake County, a body politic and corporate of the State of Utah, to be held in trust for the use and benefit of the Salt Lake County Hospital located at 2033 South State Street, Salt Lake City, Utah.

The main question to be considered is whether or not the decedent's Will clearly expresses the intention of the testator as to what person or persons are entitled to the distribution of the residue of his estate. In other words, did the trial court resort to speculation and conjecture in finding that Salt Lake County Hospital was the intended sole legatee under the testator's Will.

In Section 74-2-2 of Utah Code Annotated 1953, it is stated:

"In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations."

In Page on Wills, Sec. 54, the rule on certainty of a Will is stated as follows:

"The intention of testator to make testamentary disposition of his property, or to appoint an executor or a testamentary guardian, must be

expressed in such terms that the court can determine what was his wish without resort to conjecture. Both the thing given and the person to whom it is given must, in testamentary disposition of property, be set forth with such certainty that the court can give effect to such gift when the estate is to be distributed. \* \* \*

The identity of the legatees must be reasonably certain. If the legatee can not be identified properly after considering the terms of the Will, the surrounding circumstances, and other admissible extrinsic evidence, the gift is void."

*In re Zilke's Estate*, 1 Pac. 2nd 475, the Testator left an olographic Will which was duly admitted to probate and read as follows:

"When I am dead I wont everyting to go to Offens home of San-Francisco. You find everyting in box 3608 Humbolt Bank. This is my last Will.

"March 20, 1927.                      Edward J. A. Zilke."

Upon a hearing of the Petition for Distribution the heirs at law and next of kin of the deceased claimed that they were entitled to the proceeds of the estate upon the ground that the Will was uncertain, and that the intention so ambiguous that the Will was void. The trial Court held that a number of orphan asylums situated in the City and County of San Francisco, seven in number, were entitled to the proceeds of the estate.

The Court reversed the decree and stated:

"If it appeared that there was no institution bearing the name used in the will and that there



were seven institutions conducted as orphans' homes in San Francisco, a latent ambiguity arose, which ambiguity might have been removed by other evidence. In *Taylor v. McCowen*, 154 Cal. 798, the court at page 802, 99 P. 351, 353, quoted with approval the following language from *Patch v. White*, 117 U.S. 210, 6 S. Ct. 617, 710, 29 L. Ed. 860: 'It is settled doctrine that, as a latent ambiguity is only disclosed by extrinsic evidence, it may be removed by extrinsic evidence. Such an ambiguity may arise upon a will, either when it names a person as the object of a gift, or a thing as the subject of it, and there are two persons or things that answer the name or description; or \* \* \*' No evidence was offered to remove the ambiguity in the present case, and we are compelled to resort to the terms of the will alone in an effort to ascertain the intention of the testator. Civ. Code 1318. Under these circumstances, the question of the propriety of the decree is solely a question of law. *Estate of Langdon*, 129 Cal. 451, 62 P. 73.

"It is a statutory rule of construction that 'The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.' (Civ. Code, 1324.) If the will had provided that the estate should go to the orphans' 'homes' of San Francisco, we do not doubt that the decree entered would have been proper, assuming, of course, that respondents represented all of the institutions falling in that class. See *Estate of Pearsons*, 113 Cal. 577, 45 P. 849, 1062, and *Estate of Pearsons*, 125 Cal. 285, 57 P. 1015. The will, however, provided that the estate should go to the orphans' 'home' of San Francisco. Counsel for respondents

state that 'The case turns solely on the importance of the omission of the letter 's' from the word "home",' and that such omission is 'frail ground indeed for the argument that the will should be invalidated and the charities deprived of the testator's intended benefaction.' But who can say from the terms of the will that the letter 's' was not intentionally omitted and that the testator did not have a particular home in mind as the recipient of his benefaction? This appears to be quite probable when we consider that the testator employed a capital letter at the beginning of the word 'Offens,' which may be some indication that he was endeavoring to employ the name of some one institution. In any event he used the singular and not plural, and we are of the opinion that the language used is insufficient to support a decree in favor of all orphans' homes or in favor of any particular orphans' home, in the absence of some evidence other than the will itself to show what the testator's intention was. The situation before us is much the same as though the testator had provided in his will that his entire estate should go to his 'niece' and the court had distributed the estate to all of his 'nieces' solely upon the showing that there was more than one person answering that description. In such case, it is clear that the decree could not stand. It is true as contended by respondents, that misspelling and grammatical inaccuracies in a will are ordinarily of no consequence, but this rule is properly qualified in the citation quoted by respondents as follows: 'Grammatical inaccuracies are immaterial, *provided the intention appears* \* \* \*' 17 Am. & Eng. Ency. of Law (2d Ed.) p. 20.

"It may be that the testator intended to leave his property in equal shares to all orphans' homes

in San Francisco as a class, or, on the other hand, it may be (and it appears more likely) that he intended a bequest to some particular orphans' home. Whatever his actual intention may have been, he failed to express it with reasonable certainty, and it is impossible to ascertain it from the will itself. Upon the record before us, the decree is based upon speculation and conjecture as to what his intention was. As was said in *Estate of Hoytema*, 180 Cal. 430, at page 432, 181 P. 645, 'Courts are not permitted, in order to avoid a conclusion of intestacy, to adopt a construction based on conjecture as to what the testator may have intended, although not expressed.' And again on page 433 of 180 Cal., 181 P. 645, 646, 'Only through speculation and conjecture may the construction contended for by appellants be confirmed. And this can not be countenanced in view of the cardinal rule to the effect that in the interpretation of wills it is not the probable intent which may have existed in the mind of the testatrix which prevails, but only that which is expressed in the language of the will.'

"For the foregoing reasons, the portion of the decree appealed from is reversed."

*In re Hopes Estate*, 98 A.622, the Testator bequeathed a share of his estate to any hospital in the city of Philadelphia that should be devoted to the treatment of contagious diseases for the purpose of endowing a ward therein, and provided a gift even if there be no such hospital at the time the legacy became payable.

Held: that the Testator intended a gift to a hospital devoted to the treatment of contagious diseases and not a hospital containing a ward or isolation ward where

such diseases were incidentally treated, or to a hospital that was willing to establish such a ward for the treatment of such diseases, and so, there being no hospital for the treatment of such diseases the gift failed.

In *Board of Trustees of M. E. Church v. May*, 99 A.1093, the bequest was as follows: "The remainder to be given to the Methodist E. Church, South, and Missionary Cause." This bequest was held indefinite and void as the words "and Missionary Cause" were too vague.

In the Will under consideration there are several matters which render the Will void because of uncertainty in the expression of the Testator's intention, namely:

(1) The Testator fails to state the territorial location of the public or county hospital that is referred to in his Will. It is only by conjecture and surmise that one can assume that the Testator's reference to the county hospital refers to the hospital conducted by Salt Lake County. There is no evidence that the Testator was ever treated in the Salt Lake County Hospital or that he expressed to anyone a desire to leave his money to the Salt Lake County Hospital.

(2) The Will is contradictory in that the attempted devise is in the alternative, to-wit: "to the public hospital or County Hospital for the poor." Who can say with certainty from reading of the Will that the Testator's chief intention was that the residue of his estate be distributed to St. Mark's Hospital or some other hospital outside of Salt Lake County, or the State of Utah. Let

us assume that the Will read as follows: "I leave all my money to John Brown or William Brown." Who can say from construing the language of such a Will who is entitled to the distribution of the estate?

(3) There is no evidence adduced before the Court that throws any light as to whom the Testator intended to leave his money as the name of the beneficiary is vague and uncertain, and the locality of the devisee lacking.

(4) To determine from reading the will that the decedent intended to give his estate to Salt Lake County for the poor it is necessary to read into the will the words "Salt Lake", which do not appear. Further, the will states that he leaves his money for the poor. The will is vague and ambiguous as to how it shall be used in helping and assisting the poor.

## POINT 5

### SALT LAKE COUNTY DOES NOT HAVE POWER TO RECEIVE TESTAMENTARY DISPOSITIONS.

It is generally recognized that the power to acquire a bequest or take a testamentary disposition of property depends upon the will of the Legislature.

In Section 74-1-4 of Utah Code Annotated 1953, it is stated:

"WHO MAY TAKE UNDER WILL. — A testamentary disposition may be made to any person or corporation capable by law of taking the property so disposed of by deed or assignment or other transaction between living persons."

The Legislature has provided that the agriculture college, Sec. 53-31-4 U.C.A. 1953; art institute, Sec. 64-2-18 U.C.A. 1953; deaf and blind school, Sec. 64-3-2 U.C.A. 1953; fair association, Sec. 64-4-1 U.C.A. 1953; nonprofit corporations, Sec. 16-6-8 U.C.A. 1953; state hospital, Sec. 64-7-4 U.C.A. 1953; and state university, Sec. 53-30-3 U.C.A. 1953 may take testamentary disposition of property under a Will. Nowhere in the statutes of this State has a Legislature empowered a county to take property under a testamentary disposition.

In 43 C.J. page 1337 it is stated: "It is a general rule, however, that a municipal corporation cannot take and hold property in trust for a purpose which is foreign to the objects of its incorporation, and in which it has no interest."

In *Dailey v. New Haven*, 22 A. 945, the Testator bequeathed to the city \$130,000.00 for the use of the poor. It was held that in the absence of authority granted by its charter a city had no power to accept the bequest in trust to apply towards income from furnishing necessities to the poor.

Likewise in *Augusta v. Walton*, 1 S.E. 214, it was held that municipal authorities had no right under the laws of Georgia to accept or administer a trust for the benefit of the poor.

The Legislature has not granted Salt Lake County any authority or power to accept benefits. Not having such power the County is not in a position to accept the bequest or to administer the same. A lack of such power

forbids the County from seeking to enforce the testamentary disposition in this case.

The County will probably cite Section 17-5-44 Utah Code Annotated 1953 as an authority that the County has been granted power to receive testamentary bequests, which Section reads as follows :

“They may receive from the United States or other sources, lands and other property granted or donated to the County for the purpose of aiding in the erection of County buildings, roads, bridges or for other specific purposes may use the same therefor, and may provide for sale of the same and the application of the proceeds thereof.”

The above statute refers specifically to donations, having in mind lands or buildings, roads or bridges, that may be donated by the United States or some other source to aid the County in carrying on its business. There is nothing in the statute referring to any testamentary bequests. There is considerable difference between a donation and a bequest. The donee may refuse a donation because it may be a burden. For instance, the County may refuse a parcel of land that someone may want to donate to it upon the ground that the up-keep may be too burdensome on the taxpayers.

## CONCLUSION

The Appellant submits that the decedent's Will is indefinite and uncertain and should be declared void for uncertainty. Further, Salt Lake County does not have

power to receive testamentary dispositions. Therefore, the judgment of the trial court should be reversed and the monies in the estate be distributed to decedent's heirs.

Respectfully submitted,

H. G. METOS,  
*Attorney for Appellant*