

PROBATE ADVISORY COMMITTEE  
Probate Law Revision

Forty-sixth Meeting  
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Date: Saturday, April 20, 1968

Time: 9:30 a.m.

Place: Suite 2201, Lloyd Center, Portland  
(This Board Room is at the head of  
the spiral stairway on the Central  
Plaza, or take elevator to the med-  
ical section.)

Suggested Agenda

1. Approval of minutes of February meeting.
2. Miscellaneous matters.
3. Alternative inheritance tax draft.
4. Estate tax draft.  
Report from Oregon State Bar Committee on Taxation.
5. Draft of amendments to guardianship code to conform to  
proposed revised probate code.  
Mr. Zollinger and Mr. Butler.
6. Planning of regional meetings to explain and discuss  
proposed revised probate code.

PLEASE NOTE: There will be no Friday  
afternoon meeting. The meeting will  
begin at 9:30, Saturday morning, April  
20, at Lloyd Center.

ADVISORY COMMITTEE  
Probate Law Revision

Forty-sixth Meeting, April 20, 1968  
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Minutes

The forty-sixth meeting of the advisory committee (a joint meeting with the Committee on Probate Law and Procedure, Oregon State Bar) was convened at 9:30 a.m., Saturday, April 20, 1968, in Suite 2201, Lloyd Center, Portland, by Vice Chairman Zollinger.

The following members of the advisory committee were present: Zollinger, Allison, Butler, Carson, Gooding, Husband, Jaureguy, Lisbakken, Mapp and Riddlesbarger. Dickson and Frohnmayer were absent.

The following members of the Bar committee were present: Field, Krause, Lovett, Mayer, Meyers, Thalhofer and Thomas. Anderson, Buhlinger, Heisler, Kraemer, McKay, Pendergrass, Piazza, Rhoten, Shetterly, Smith and Warden were absent.

Also present were Donald J. Georgeson, Robert W. Gilley, Campbell Richardson and Robert W. Lundy, Legislative Counsel.

Approval of February Minutes

A motion was made, seconded and carried to approve the minutes of the February 1968 meeting.

Miscellaneous Matters

Zollinger commented on the appearance by himself and Allison before the Law Improvement Committee at its meeting on March 8, 1968, to report on the status of the probate law revision project and to receive the suggestions and instructions of the Law Improvement Committee on the production and distribution of the draft of the proposed revised probate code and further proceedings in the prosecution of the project. He noted that he and Allison were given a cordial reception by the Law Improvement Committee.

Zollinger indicated that one of the principal questions discussed at the Law Improvement Committee meeting was whether the draft should be published and distributed without prior review and approval by the Law Improvement Committee. He reported that members of the Law Improvement Committee had referred to the procedure followed in regard

to the draft of the proposed Oregon Insurance Code prior to the 1967 regular legislative session. The advisory committee on insurance law revision had published the draft, distributed it to interested persons, held hearings on it and made certain changes therein before it was subjected to a detailed review and consideration by the Law Improvement Committee. Members of the Law Improvement Committee had expressed the view that this procedure had proven satisfactory and that employment of a similar procedure would appear appropriate and desirable in regard to the draft of the proposed revised probate code.

It was suggested at the Law Improvement Committee meeting, Zollinger stated, that the probate draft be published and distributed as soon as possible, and that thereafter regional meetings of attorneys in the state be scheduled for the purposes of presenting explanations of the draft and obtaining comments, suggestions and criticisms. Members of the advisory and Bar committees would attend such meetings for the purposes indicated. Following such meetings the advisory and Bar committees would meet to review and evaluate the comments, suggestions and criticisms so obtained, amend the draft to the extent it appeared desirable and submit the amended draft to review by the Law Improvement Committee. The Law Improvement Committee would consider the amended draft and make whatever further amendments appeared appropriate, submitting the final approved product to the Legislative Assembly at its 1969 regular session. Neither the amended draft submitted to the Law Improvement Committee nor the product submitted by it to the legislature would be published in large quantities for wide distribution, as was done in the case of the earlier draft.

Zollinger expressed approval of the procedure proposed at the Law Improvement Committee meeting. He stated that Allison had delivered to Lundy the statutory and comment material to be incorporated in the draft, and that Lundy had begun the necessary editorial work, limited largely to matters of form and style and other technical matters, to get the material in proper shape for publication of the draft. It was estimated that the published draft would consist of a maximum of approximately 400 letter-size pages.

Lundy raised the question of the number of copies of the draft to be published and distributed. He noted that, according to the report of the Secretary of the Oregon State Bar published in the 1967 Committee Reports, the number of active Bar members was slightly in excess of 2,900 as of June 30, 1967. He reported that it had been suggested to

him by a member of the Law Improvement Committee and a member of the Bar Committee on Law Revision that, instead of automatically mailing a copy of the draft to each attorney in the state, an order form for the draft might be sent to each such attorney for his return if he wished to receive a copy, and that by use of this procedure the number of copies to be published might be reduced, and also, therefore, costs of publication and distribution.

It was pointed out that copies of the draft should be available for distribution to interested persons other than attorneys in the state, and at the regional meetings to be scheduled for consideration of the draft.

Allison recalled that the Bar Committee on Continuing Legal Education, in the course of determining the number of copies of its publications to produce, had learned that large law firms did not desire a copy for each firm attorney, but preferred only library copies. He suggested that if the same view prevailed in regard to the probate draft, the number of copies thereof to be published might be reduced. The question as to the ease of ascertaining the wishes of large law firms in this regard was raised and discussed. The suggestion was made that the mailing list maintained by the Bar probably would have to be used in the distribution of the draft to attorneys in the state. It was agreed that distribution should be accomplished in the most economical manner possible, and Lundy expressed the view that unless a more selective distribution than to all attorneys on the Bar mailing list could be easily determined and substantial savings effected by such a selective distribution, this approach would not seem to be worthwhile. Zollinger commented, and other committee members appeared to agree, that he favored a distribution of copies of the draft to all active attorneys in the state, and that since comment on and criticism of the draft was being sought, no one should be overlooked and everyone should be afforded an opportunity to express opinion on the draft.

Lundy pointed out that the 1967-1969 budget for the Legislative Counsel Committee included the sum of \$2,000 for all publications of the Law Improvement Committee. In response to a question as to the estimated cost of publishing the probate draft, Lundy indicated that, assuming a draft of 400 pages and publication of 3,000 copies, it had been estimated that the cost of printing would be between \$2,300 and \$2,400. It was suggested that the Bar might be willing to assume some portion of the cost of publishing and distributing the draft.

After further discussion, Husband moved, and it was

seconded, that the Legislative Counsel be requested to cause the printing of a sufficient number of copies of the draft to permit distribution to all active attorneys in the state, to other interested persons and at the regional meetings to be scheduled for consideration of the draft. Motion carried.

#### Inheritance Tax

Allison referred to the draft relating to inheritance tax prepared by him, designated "2nd Draft," dated March 21, 1968, and comments thereon, copies of which had been mailed to all members of the committees prior to the meeting. He proceeded to read aloud the comments on the draft, offering additional explanation where appropriate.

Butler stated that it was his understanding that the committees had gone on record as favoring the adoption of an estate tax in lieu of the present inheritance tax, and expressed the opinion that, if such was the case, amendments to the present inheritance tax statutes should not be included in the proposed revised probate code. He suggested that amendments to the present inheritance tax statutes not be proposed unless the 1969 legislature declined to adopt an estate tax. Lundy commented that he had received the impression from the presentation made by representatives of the advisory committee at the recent Law Improvement Committee meeting that the proposed revised probate code would contain necessary housekeeping changes in the present inheritance tax statutes and that the estate tax proposal would be submitted as a separate measure. He thought members of the Law Improvement Committee also received this impression. Zollinger confirmed that this was the information conveyed to the Law Improvement Committee, and indicated that he thought this was the plan previously approved by the committees; that the committees did favor an estate tax, but were not yet prepared to offer a proposed measure on the subject because information on rates for an estate tax was not yet available. He remarked that failure to include in the proposed revised probate code the necessary housekeeping changes in the present inheritance tax would render the proposed code incomplete, and suggested that a statement setting forth the position of the committees favoring an estate tax, together with an explanation of the reason for the proposed housekeeping changes in the present inheritance tax, be included in the comments on the proposed code. Butler expressed the view that it would be confusing to the legislature to be presented with both housekeeping changes in the present inheritance tax and an estate tax proposal.

Zollinger asked whether an estate tax measure would be

ready in time for submission to the 1969 legislature. Lisbakken expressed some doubt that such a measure would be ready in time. She reported that a subcommittee of the Bar Committee on Taxation had studied the matter in order to make recommendations thereon to the full Bar committee, but that the subcommittee was somewhat at a loss to know what to recommend by reason of an unclear picture of the position of the advisory committee on the matter and information that the advisory committee planned to propose housekeeping changes in the present inheritance tax. Lisbakken indicated that the subcommittee planned to meet with the full Bar committee in the latter part of April to submit and discuss an estate tax draft, and that the full Bar committee probably would require a couple of months thereafter to review that draft before meeting again to consider it. She remarked that it appeared unlikely that the full Bar committee would be able to take affirmative action on that draft in time to be of assistance to the advisory committee in the formulation of an estate tax proposal.

Field commented that she favored embodying the estate tax proposal in a separate measure, on the ground that inclusion of the proposal, which represented a substantial change in the law and raised problems as to the level of revenue yield, in the proposed revised probate code would tend to make legislative passage of the proposed code more difficult. Lisbakken suggested that the proposed code might be left silent as to either an inheritance or estate tax. Field indicated that she favored inclusion of the inheritance tax housekeeping changes in the proposed code. Allison remarked that he was in agreement with Field on the matter; that the housekeeping changes were necessary to make the inheritance tax statutes consistent with procedural changes embodied in the proposed code.

Lisbakken expressed the opinion that the amount of revenue raised by an inheritance or estate tax was not very significant in the total state revenue picture. She noted that a recent issue of the "Oregon Voter" (January 27, 1968) contained figures showing that revenue from inheritance and gift taxes in fiscal 1967 accounted for only 2.6% of the total revenue to the state of over \$323 million. Husband commented that he was fearful the committees were paying too much attention to the revenue aspects of a change from an inheritance tax to an estate tax, and that more consideration should be given to the tax impact and other substantive features of the two taxes.

Following further discussion on the amount of revenue

raised by an inheritance or estate tax and on the problem of securing the information necessary to establish estate tax rates that would result in substantially the same amount of revenue as presently raised by the inheritance tax, Zollinger requested an expression of opinion on the question of whether the present inheritance tax or an estate tax was preferred. A show of hands disclosed that 14 members preferred an estate tax and three members favored the present inheritance tax. Husband stated that he would want to know more about the effect of an estate tax on the amount of tax paid by heirs before a final vote on the estate tax approach. Allison explained that he had voted in favor of the estate tax, but thought the proposal was too controversial for inclusion in the proposed revised probate code itself, whereas the housekeeping changes in the inheritance tax were not, in his opinion, controversial. He remarked that if the proposed code incorporated the estate tax proposal, it might end up being subjected to consideration at the 1969 legislative session by the Ways and Means and Taxation committees, as well as by the Judiciary committees, which could complicate the problem of passage of the proposed code.

Mapp asked whether the housekeeping changes in the inheritance tax embodied in Allison's draft contemplated procedures that would be consistent with a later change from the concept of an inheritance tax to that of an estate tax. Allison responded that the housekeeping changes contemplated, basically, a tax return filed with the State Treasurer, a determination by the State Treasurer of the amount of the tax due and an appeal to the probate court, a procedure which would be the same under the estate tax approach.

Butler moved, seconded by Lisbakken, that the proposed revised probate code not include any provisions changing the inheritance tax statutes. Motion failed.

Allison referred to the existing statute sections relating to inheritance tax proposed to be repealed by section 9 of his draft dated March 21, 1968, and proceeded to comment thereon and indicate the reasons for such repeal. He pointed out that the substance of many of the sections proposed to be repealed was covered by procedural provisions in the proposed revised probate code.

Richardson asked whether, under Allison's draft, there would still be a procedure to obtain appraisal of an estate by an appraiser appointed by the court for inheritance tax purposes if the estate was not probated. Allison responded that such a procedure was available under his draft. Gooding

referred to ORS 118.700, as amended by section 8 of the draft, and suggested, and Richardson agreed, that the section was adequate to cover the matter raised by Richardson.

The committees proceeded to consider the sections of Allison's draft in detail.

Section 3. Reference was made to the wording "in the penalty of three times the amount of such tax" in ORS 118.300, as amended by section 3 of the draft. The necessity that the bond be in an amount three times the amount of the tax was discussed. To the suggestion that the bond be in the same amount as the tax, it was pointed out that interest would continue to be added to the amount of tax due as payment deferral continued and the bond should be sufficient to cover this addition. Allison suggested that the amount of the bond might be prescribed as "such amount as the State Treasurer may approve." Zollinger indicated he favored a requirement that the bond be "double the amount of the tax." Allison moved, and it was seconded, that the wording be "shall give a bond to the state of double the amount of the tax." Motion carried.

Zollinger referred to the last sentence of the section, questioned the requirement of renewal of the bond every five years and suggested that the requirement be changed to renewal every 15 years. No action was taken on the suggestion.

Section 4. Carson referred to subsection (2) of ORS 118.350, as amended by section 4 of the draft, and suggested use therein of "court" instead of "circuit court" and "this state" instead of "the state." Gilley suggested deletion of "in the circuit court of the state." The necessity of the wording "involving the title to real property only" was discussed. After further consideration, it was agreed that the first sentence of the subsection should be revised to read: "In any suit or action involving the title to real property, in which it appears, by the pleadings or otherwise, that an inheritance tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, the court shall direct . . ."

Section 5. After discussion, it was agreed that the wording of subsection (1) of ORS 118.640, as amended by section 5 of the draft, beginning with the second line on page 5, should be revised to read: "provided, that when an interest is contingent, defeasible or of such a nature that its true cash value cannot sooner be ascertained, it shall be determined at the time when the value first becomes ascertainable, . . ."

Section 6. It was agreed that changes should be made in the wording of subsection (1) of ORS 118.660, as amended by section 6 of the draft, as follows: Substitute "The personal representative of an estate" for "Every personal representative of any estate"; delete "and appraisalment" following "a copy of each inventory"; and delete ", and shall file with the clerk proof of the delivery."

Richardson referred to the wording "if the estate is not administered, a trustee or heir of the decedent acceptable to the State Treasurer" in subsection (2), and asked if the wording was broad enough to include a life insurance policy and the beneficiary thereof. After discussion, it was agreed that the wording should be revised to read: "The personal representative, or, if none is appointed, a trustee, heir or other representative of the decedent, . . ." It was also agreed that "verified," before "return," should be deleted.

Section 7. After discussion, it was agreed that section 7 of the draft should be revised to read: "The State Treasurer shall determine the amount of the tax. If he determines that there is a deficiency in the amount of the tax as computed by the return, he shall give notice of the deficiency to the person who filed the return."

Section 8. Richardson referred to subsection (1) of ORS 118.700, as amended by section 8 of the draft, and the 60-day requirement therein for the filing of objections. He expressed the view that the court should be authorized to allow additional time for such filing, but it was agreed that no change should be made in this regard.

Carson suggested, and it was agreed, that "objection" should be substituted for "objections" throughout section 8.

It was agreed that the sentence "All evidence heard on such reappraisalment shall be reduced to writing and filed with the clerk of the court" in subsection (2) should be deleted. It was also agreed that "probate," before "court," in subsection (3) should be deleted.

Jaureguy moved, and it was seconded, that the draft relating to inheritance tax, dated March 21, 1968, with the changes agreed upon by the committees, be approved. Motion carried.

The meeting was recessed at 11:35 a.m.

The meeting was reconvened at 12:55 p.m., by Vice

Chairman Zollinger. The following members of the advisory committee were present: Zollinger, Allison, Butler, Carson, Gooding, Husband, Jaureguy, Lisbakken, Mapp and Riddlesbarger. The following members of the Bar committee were present: Krause, Lovett, Mayer, Meyers, Thalhofer and Thomas. Also present were Gilley, Georgeson and Lundy.

#### Renunciation of Intestate Succession or Devise

Before commencing her report of the activities of the subcommittee of the Bar Committee on Taxation concerning an estate tax, Lisbakken inquired whether her recollection was correct that the committees previously had approved a provision on renunciation of intestate succession or devise that contemplated total renunciation, but not partial renunciation. Allison affirmed that this was correct, and referred to the draft on the subject, designated "Amended 2nd Draft," and dated January 4, 1968. He commented that it had been determined that allowing partial renunciation would involve a number of difficulties, and that for this reason the draft was written to contemplate only total renunciation. Lisbakken indicated that she understood the primary reason for the provision was to avoid the imposition of gift tax in regard to renunciation. Allison explained that the tax situation was much clearer in the case of total renunciation than in partial renunciation circumstances.

Lisbakken remarked that it was her impression that the committees at one time had approved partial renunciation. It did not appear that the committees had formally approved the draft dated January 4, 1968. After further discussion on the subject of renunciation, including its application under present law, Lisbakken moved, and it was seconded, that the draft dated January 4, 1968, be revised to permit either total or partial renunciation, as provided in section 2-801, Uniform Probate Code (3rd Working Draft, November, 1967). Motion carried.

#### Estate Tax

Lisbakken reported on action by the subcommittee of the Bar Committee on Taxation in regard to an estate tax, and referred to the draft dated January 19, 1968, which appeared as an appendix to the minutes of the January meeting of the committees. She noted that one member of the subcommittee had objected to the adoption by reference in the draft of so much of the federal estate tax law, especially that relating to the marital deduction, and had proposed that more detail be set forth in the draft. She indicated that the

subcommittee had proceeded to revise the draft to set forth more detail and eliminate references to the federal law.

Lisbakken commented that the subcommittee had favored leaving the amount of the exemption in the draft blank, rather than retaining the \$25,000 or some other specific figure. It was the view of the subcommittee that the specific amount of the exemption could be inserted later. In response to a question by Allison, it was explained that there was no particular reason for choosing \$25,000 as the amount of the exemption.

Lisbakken pointed out that the present inheritance tax law did not contain provision to compel the filing of a return, and suggested that a provision be included to accomplish this purpose.

It was noted that the estate tax draft did not contain tax rates, and the problems involved in determining what those rates should be was discussed at some length. Allison asked whether it would facilitate the determination of such rates if the present inheritance tax exemption were used. Butler and others expressed the view that such an approach would not prove satisfactory. Zollinger commented that if the amount of the exemption and the tax rates were left blank in the draft, it would not be in a form suitable for submission to the legislature. It was, in his opinion, unrealistic to count on an estate tax draft being ready in time for introduction at the 1969 legislative session.

Lisbakken stated that Mr. J. J. Ferder, Supervisor of the Inheritance and Gift Tax Division, had offered to make the records of his office available to the committees for the purpose of gathering data upon which to base proposed estate tax rates.

Husband expressed the view that determination of the proper rates under the estate tax would be a difficult matter, particularly because of the marital deduction and taxation of joint tenancy features. The question was posed whether it would be necessary to fix the amount of the exemption before determining what the rates should be, and it was concluded that the rates would be dependent upon the amount of the exemption. Allison suggested it would be desirable to use the \$15,000 exemption presently in effect under the inheritance tax law, and proceed on that basis in determining estate tax rates. Zollinger pointed out that the marital deduction complicated the determination of rates, and that it did not appear such determination involved a simple mathematical computation.

Butler expressed the opinion that formulation of an estate tax proposal represented a worthwhile effort on the part of the committees and should not be abandoned. Zollinger remarked that it was not proposed that the project be abandoned. Most of the committee members present expressed willingness to continue to study the matter, but were of the opinion an estate tax proposal should not be part of the proposed revised probate code submitted to the 1969 legislature. Some members indicated their fear that if the housekeeping changes in the present inheritance tax law were presented to the 1969 legislature, but no estate tax proposal, it would give the impression that the present inheritance tax law was considered satisfactory and that the committees favored it, which was not in fact the case.

Gilley proposed that a clear statement of the position of the committees on the matter be included in the comments on the proposed code; that the committees did not, by proposing housekeeping changes in the present inheritance tax law, intend to imply that they favored the inheritance tax, but rather preferred an estate tax, on which study should continue. Allison indicated that he was in agreement with Gilley's proposal. Zollinger requested Allison to prepare an appropriate statement for inclusion in the comments.

Mapp suggested that the housekeeping changes in the present inheritance tax law be submitted to the legislature in the form of a measure separate from the proposed revised probate code. He commented that the probate codes of other states did not include an inheritance or estate tax. Allison noted that the Oregon inheritance tax law contained considerable provision geared to aspects of the Oregon probate code. Zollinger remarked that if the proposed code did not contain the inheritance tax housekeeping changes, enactment of the proposed code would result in leaving a good deal of variance and inconsistency in the inheritance tax law. Mapp explained that he was suggesting three separate bills - a proposed revised probate code, a proposal involving housekeeping changes in the present inheritance tax law and a proposal for an estate tax law - and that by use of this procedure the position of the committees on inheritance versus estate tax might be made clearer to the legislature.

In response to a question, Carson expressed his opinion that he preferred an estate tax to the present inheritance tax, but that if an estate tax proposal could not be formulated in time, the committees should proceed with the inheritance tax housekeeping changes. He was hopeful an estate tax proposal could be worked out in time for submission to the 1969 legislature. He had no fixed opinion on whether the

inheritance tax housekeeping changes and estate tax proposal should be incorporated in the proposed revised probate code or submitted as separate measures. He stated that the most practicable suggestion appeared to be that concerning the inclusion of an appropriate explanation of the committees' position in the comments.

The question of whether an estate tax proposal could be ready in time for presentment to the 1969 legislature was further discussed. It was pointed out that the Bar Committee on Taxation would have to have its 1968 report ready in June, but would need more time to consider an estate tax. Riddlesbarger indicated his impression that the Bar Committee on Taxation viewed the matter as involving no need to rush. He asked whether it was thought the probate committees should proceed to take action on the estate tax proposal without prior approval of the proposal by the Bar Committee on Taxation. Butler remarked that he did not believe the Bar Committee on Taxation would oppose the proposal, but, on the other hand, he was not sure that committee would approve the proposal with enthusiasm.

Riddlesbarger moved, and it was seconded, that the proposed revised probate code not include any proposed changes in ORS chapter 118 (the present inheritance tax law), but that such changes be incorporated in a separate measure submitted to the Law Improvement Committee and then the legislature, with the understanding that there might be a third measure consisting of an estate tax proposal if such were ready in time for introduction at the 1969 legislative session. Motion failed, 7 ayes and 8 nays. On a separate vote by members of the advisory committee only, motion failed, 4 ayes and 5 nays. Allison commented that, in view of failure of the motion, he would proceed to prepare an appropriate explanation of the position of the committees for inclusion in the comments on the proposed revised probate code.

Lisbakken asked if there was any reason why an estate tax proposal could not be formulated without rates and presented to the Law Improvement Committee on that basis. In response to a question by Husband, Lisbakken suggested that the estate tax rates could be finally determined and inserted in the proposal at a later time. It was pointed out that a tax bill had been introduced at the 1967 regular session of the legislature that included blanks for later insertion of appropriate figures. Lundy commented that while it was not an unheard of practice for bills to be introduced with blanks, the Law Improvement Committee might be hesitant to follow such a practice in making its recommendations to the legislature.

Riddlesbarger suggested that, since the committees had approved the concept of an estate tax, an effort should be made to prepare proposed legislation on such a tax, and that the matter of such preparation should be referred back to the subcommittee. Zollinger reviewed the tentative time schedule for various actions on the proposed revised probate code prior to the 1969 legislative session and suggested that the time schedule would not afford sufficient opportunity for the committees to do the necessary work in formulation of an estate tax proposal for submission at that session. Lisbakken commented, and Riddlesbarger agreed, that the only significant problem remaining in the formulation of the estate tax proposal was determination of the appropriate rates. Zollinger expressed the view that considerably more would be involved. Husband indicated that he did not view submission of the estate tax proposal in 1969 as critical; that postponement of such submission until 1971 would not be fatal.

The matter of determining estate tax rates, including the obtaining of appropriate data to aid in that determination, was discussed again. It had been planned to secure the data from Mr. Ferder's office and from county clerks, and to utilize a computer to process this data. Krause pointed out that the records referred to would not contain data on life insurance benefits. It was suggested that the Insurance Commissioner or the insurance industry could supply such data, and noted that some statistics on the subject appeared in an annual issue of the "Oregon Voter."

Lisbakken expressed the opinion that the inheritance tax housekeeping changes approved by the committees would weaken the chances of achieving enactment of an estate tax law, and that the best chance for such enactment was at the same time as enactment of the proposed revised probate code. Other members indicated apprehension that controversy raised by an estate tax proposal would endanger favorable legislative action on the proposed code.

Zollinger remarked that the committees would be considering the proposed code at meetings in September and October, and could also consider an estate tax proposal at that time if it was ready for such consideration. Riddlesbarger moved, and it was seconded, that the estate tax matter be re-referred, with a vote of confidence to the subcommittee. Motion carried.

#### Payments to Minors; Powers of Attorney

Copies of a report by Zollinger, dated April 20, 1968, containing proposed provisions relating to payments to minors and powers of attorney, with commentary thereon, were

distributed to committee members present. [Note: This report is set forth in the Appendix to these minutes.]

Payments to minors. Butler explained that section 1 set forth in the report was based upon section 5-103, Uniform Probate Code (3rd Working Draft, November, 1967), and provided a procedure whereby money or tangible chattels might be paid or delivered to a minor without the necessity of a guardianship proceeding. He proceeded to point out the differences between section 1 and the Uniform Code section, and commented thereon.

Lundy referred to ORS 126.555, enacted in 1961 and amended in 1965 pursuant to recommendation by the advisory committee, and asked whether the ORS section and section 1 set forth in the report did not appear to cover the same kinds of situations. Zollinger responded that he contemplated that section 1 would replace the ORS section. Lundy pointed out that while the maximum amount that could be paid or delivered under section 1 was greater than that under ORS 126.555, the ORS section applied in the case of a person under any legal disability, not just a minor, and covered transactions other than the payment or delivery of money or tangible chattels; i.e., also the settlement of debts or other choses in action and the sale of property.

Zollinger suggested that the features of section 1 and ORS 126.555 might be combined in a single section. Allison expressed the view that such combination would be made difficult by the difference in procedure between section 1 and the ORS section, as well as the difference in maximum amounts. Zollinger remarked that the maximum amount for all transactions covered might be increased to \$5,000.

In response to a question by Lundy, it was explained that the maximum amount prescribed in section 1 was intended to limit the payment or delivery by a particular person to a minor, and would not prohibit, for example, payments by two or more persons of up to \$5,000 each.

Husband asked whether the \$5,000 maximum amount prescribed in section 1 was not too high. Zollinger responded that, in his opinion, previous practice in regard to payments to minors without formal court proceedings had been too conservative, and that the \$5,000 maximum amount was quite reasonable. He remarked that a few instances of loss were going to occur whether or not guardianship was established, and expressed the view that little would be gained, where relatively small amounts were involved, by a guardian's bond, the seeking of court approval on matters and other formal procedures contemplated by guardianship.

After further discussion, Butler was designated to prepare an amalgamation of section 1 and ORS 126.555, in line with the views expressed in the previous discussion, and to send the product to Allison.

Powers of attorney. Butler referred to section 2 set forth in the report and read aloud the comment thereon. Butler moved, seconded by Lisbakken, that section 2 be approved. Motion carried.

### Guardianship and Conservatorship

Zollinger referred to the draft relating to guardianship and conservatorship, designated "1st Draft," dated March 25, 1968, and comments thereon, copies of which had been mailed to all members of the committees prior to the meeting. He explained that he and Allison had discussed the desirability of making relatively minor changes in the guardianship and conservatorship statutes to conform to provisions of the proposed revised probate code, and that Chairman Dickson had thereafter designated Zollinger, with the assistance of Butler, to prepare a draft incorporating such changes in the guardianship and conservatorship statutes. Zollinger proceeded to read, explain and comment on the draft.

Section 1. It was suggested, and agreed, that ORS 126.111, as amended by section 1 of the draft, should be revised to read: "The venue for the appointment of a guardian shall be the county in which the proposed ward resides, or in which any property of the proposed ward is located, or in which the proposed ward is physically present."

Section 3. Husband referred to ORS 126.171, as amended by section 3 of the draft, and questioned the requirement that the bond of a guardian be a corporate surety bond. He moved, and it was seconded, that no change be made in ORS 126.171 and that section 3 be deleted from the draft. Motion carried.

Section 4. It was pointed out that section 4 of the draft, a new section, was intended to replace ORS 126.176, which was repealed by section 21 of the draft. In view of the action by the committees on section 3 of the draft, it was agreed that the wording of the first sentence of section 4 should be revised to read: ". . . but a surety may terminate his obligation . . ."

Section 8. In response to a question by Lundy, it was explained that references to "mortgage" in ORS 126.406, as amended by section 8 of the draft, and other ORS sections as amended by sections of the draft, were deleted because the

matter of mortgaging the property of a ward was covered by ORS 126.265, as amended by section 7 of the draft.

Section 16. Reference was made to subsection (3) of ORS 126.471, as amended by section 16 of the draft, and the requirement of the first sentence of the subsection that a conveyance "set forth the book and page of the journal of the court where the order for the sale is entered" was questioned. Lundy pointed out that the same requirement appeared in ORS 126.461.

Husband moved, seconded by Allison, that the first sentence of subsection (3) be deleted, that the second sentence be revised to read "The effect of the conveyance of real property by a guardian under subsection (1) of this section shall be the same as though made by the ward while not under legal disability," and that ORS 126.461 be revised in similar fashion. Motion carried.

Section 17. It was agreed that, in the seventh line of ORS 126.540, as amended by section 17 of the draft, "surety" should be deleted and "sureties" restored.

Lisbakken referred to the new last sentence of ORS 126.540, as amended by section 17, and asked what was contemplated by the "notice" required thereby. She also asked if the one-year period referred to began when the court order was entered. Zollinger requested that Allison examine the wording of the sentence and determine whether the meaning thereof should be clarified.

Section 18. Gilley referred to ORS 126.636, as amended by section 18 of the draft, and questioned the change therein that would permit a conservator to serve without bond. He suggested that many persons for whom conservators were to be appointed would not be aware of the significance of waiving bond. Zollinger pointed out that the waiver of bond would require approval by the court, in addition to waiver in the petition, and that this requirement allowed the court to control the situation.

A motion was made, and it was seconded, that no change be made in ORS 126.636 and that section 18 be deleted from the draft. Motion carried.

Carson questioned the use of the term "ward" in the conservatorship statutes, noting that his experience indicated that many persons did not like to be referred to as "wards." The use of "conservatee" was suggested by Gilley, and "protected person" by Mapp. Lundy commented that the statutes

used "ward" as a sort of shorthand legal term, and that it did not appear the statutory use of the term required such use in other contexts.

Section 19. Lundy referred to the new subsections (2) and (3) of ORS 126.646, as amended by section 19 of the draft, and asked whether a conservator was not already authorized to perform the activities described therein, by reason of subsections (3) and (4) of ORS 126.636 and appropriate provisions of the guardianship statutes (i.e., ORS 126.255 and 126.295) apparently adopted thereby. Zollinger explained that the new subsections of ORS 126.646 contained features not found in the guardianship statutes, and expressed the view that it was desirable to set forth the authority in detail in the conservatorship statutes.

After further discussion, Krause moved, and it was seconded, that the draft, as modified by action of the committees, be approved. Motion carried.

#### Planning of Regional Meetings on Proposed Code

Zollinger outlined his view of further action in regard to the proposed revised probate code. He indicated it would be doing well if copies of the draft of the proposed code were distributed to the attorneys in the state by June 30. Thereafter, it would be necessary to schedule regional meetings of attorneys for the purpose of explaining the proposed code and soliciting comments, suggestions and criticisms. Based on these comments, suggestions and criticisms, revision of the proposed code would be necessary, and meetings of the committees to review the proposed code and revision thereof and to finalize the proposed code for submission to the Law Improvement Committee early enough, probably by October 15, to allow the Law Improvement Committee sufficient time for its review and preparation of the final proposal for presentation to the 1969 legislature. Zollinger suggested that the next meetings of the committees probably would be held in September and early October.

In response to a question by Zollinger, Lundy indicated that he would endeavor to determine as soon as possible a target date for distribution of copies of the draft of the proposed code to attorneys in the state. Zollinger stated that he was anxious to send letters to attorneys informing them that they would receive such copies and that they should plan to attend the regional meetings to consider the proposed code. He noted that it would be desirable to plan the meetings as far in advance as possible in order to avoid conflicts.

The view was expressed that it would be appropriate for Allison to attend the regional meetings because of his familiarity with all of the proposed code, but that it did not appear necessary that Lundy attend the meetings. Zollinger remarked that he had in mind that discussion at the meetings would be led by a member or members of the committees, and suggested that members might be designated to perform this function for particular regional meetings.

After further discussion, Zollinger requested that members of the committees send him written suggestions for a sensible program for the regional meetings in the various areas of the state, and that Lundy determine as soon as possible a realistic target date for distribution of the proposed code.

Husband commented that his experience on legislative committees had shown that persons appearing before such committees had been better received and achieved better results if they presented concise outline or statements of the material involved, rather than voluminous written material, because members of such committees did not have time to read the latter. He suggested that a similar approach be followed in regard to the presentation of the proposed revised probate code at the regional meetings, and that a brief summary of the proposed code, with a list of perhaps 25 of the most significant changes, be used and perhaps distributed at the meetings. Zollinger expressed agreement with Husband's suggestion.

The meeting was adjourned at 4:10 p.m.



compensation or other payments to themselves except by way of reimbursement for out-of-pocket expenses for goods and services furnished by third persons which were necessary for the minor's support and education. Any money or chattels in excess of sums required for the support and education of the minor shall be preserved for the future support and education of the minor and any balance not so used shall be turned over to the minor when he attains majority. Persons owing money or property to minors who pay or deliver it in accordance with provisions (ii) and (iii) above shall not be responsible for the proper application thereof.

COMMENT

The foregoing code provision has been adapted from Section 5-103 of the Uniform Probate Code. It differs significantly in two respects. The Uniform Commercial Code would permit payments in the manner authorized in amounts not exceeding \$5,000 per annum whereas the above provision imposes a limitation of \$5,000 in the aggregate. The provision above, in addition to permitting payments directly to a minor who has attained the age of 18 years, permits payments to a parent or other relative of the minor and to a guardian of the person of the minor. The Uniform Code varies from this in that it refers to a parent or grandparent rather than to a parent or other relative and it has a further provision which authorizes payment to a financial institution in a federally insured account in the sole name of the minor without any retained power of withdrawal.

Insofar as amounts are concerned, the Uniform Code seems to be unduly broad. It would seem to permit accumulations of \$60,000 or more in the hands of an individual who has no official authority to act as a representative for a minor. This would seem to go beyond the limits of reasonableness. Further, it would

permit a creditor or some other person owing an obligation of payment to impound funds in a bank account for a minor without regard to whether such impounding is in the minor's best interests.

If a new section such as that outlined above is adopted, it may be desirable to revise ORS 126.516 (which has to do with the disposition of guardianship estates under \$1,000 and the winding up of the affairs of such a guardianship) in such a way that the guardian of the estate, with prior approval of the court by order, may deliver all remaining personal property to such person authorized by this new section as the court may designate to be administered in a manner authorized in this new section.

Section 2. When power of attorney not terminated by disability. When a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains no words which otherwise limit the period of time of its effectiveness, the powers of the attorney in fact or agent shall be exercisable by him on behalf of the principal notwithstanding later disability or incompetence of the principal at law. All acts done by the attorney in fact or agent, pursuant to the power during any period of disability or incompetence shall have the same effect and shall inure to the benefit of and bind the principal as if the principal were not disabled or incompetent. If a guardian of the estate or conservator of the estate shall thereafter be appointed for the principal, the attorney in fact or agent shall, during the continuance of the appointment, account to said guardian or conservator rather than the principal. The guardian or

conservator shall have the same power which the principal would have but for his disability or incompetence, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

COMMENT

This new section has been adapted from Section 5-301 of the Uniform Probate Code. It differs in that the Uniform Probate Code would require the power of attorney to contain words to the effect that the power shall not terminate on disability of the principal. This new section would assume that the principal intended the power of attorney to have continuing effectiveness unless by its terms a contrary intent appears.

Section 5-301 of the Uniform Probate Code is supplemented by Section 5-302 which according to the comment appearing in the Code adopts the Civil Law rule that powers of attorney are not revoked on death or disability until the attorney in fact has actual knowledge of the death or disability. I am not suggesting adoption of Section 5-302 of the Uniform Probate Code, preferring instead to rely upon the law of Oregon as it now exists.

Proposed revised Oregon probate code  
INHERITANCE TAX  
2nd Draft  
March 21, 1968

Prepared by  
Stanton W. Allison

INHERITANCE TAX

Section 1. ORS 118.230 is amended to read:

118.230 Lien of tax; liability for payment; limitation.

(1) Every tax imposed by ORS 118.005 to 118.840 is a lien upon the property embraced in any inheritance, devise, [bequest, legacy] or gift until paid, and the person to whom such property is transferred, and the [administrators, executors] personal representatives and trustees of every estate embracing such property are personally liable for such tax until its payment, to the extent of the value of such property.

(2) However, in all estates, excepting those of non-resident deceased, if all inheritance taxes are not sued for within six years after the amount of such taxes is determined by the [probate court and the notice of such determination has been served upon the] State Treasurer, as provided in [ORS 118.690,] ORS \_\_\_\_\_, they are conclusively presumed to be paid and cease to be a lien against the estate, or any part thereof, except that as to property not previously reported to the State Treasurer, the time limitation shall run only from the time of the reporting thereof. In estates of nonresident deceased, such limitation period shall not apply until one year has elapsed after official notice of the death of

the nonresident deceased, with description and probable value of the estate, has been filed with the State Treasurer.

Section 2. ORS 118.280 is amended to read:

118.280 Power to sell for payment of tax; tax lien transferred to proceeds when property of estate sold or mortgaged. (1) Every [executor, administrator or trustee] personal representative has power to sell as much of the property embraced in any inheritance [,] or devise [Request or legacy,] as will enable him to pay the tax imposed by ORS 118.005 to 118.840, in the same manner as he is authorized to do for the payment of the debts of a decedent.

(2) Any part of the gross estate sold [pursuant to an order of the court or by virtue of a power conferred by will] for the payment of claims against the estate and expenses of administration, for the payment of the tax imposed by ORS 118.005 to 118.840, or for purposes of distribution, shall be divested of the lien of such tax, and such lien shall be transferred to the proceeds of such sale. A mortgage on property executed [pursuant to an order of court or by virtue of a power conferred by will] for payment of claims against the estate and expenses of administration and for payment of the tax imposed by ORS 118.005 to 118.840 shall constitute a lien upon said property prior and superior to the inheritance tax lien, which inheritance tax lien shall attach to the proceeds of such mortgage.

Section 3. ORS 118.300 is amended to read:

118.300 Deferred payment; bond. Any person or corporation beneficially interested in any property chargeable with a tax under ORS 118.010, and [executors, administrators] personal representatives and trustees thereof, may elect, within six months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the [probate judge of the proper county] State Treasurer may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property [upon oath] made to the [probate court] State Treasurer within six months from the date of transfer thereof, as in this section provided. Such bond must be renewed every five years.

Section 4. ORS 118.350 is amended to read:

118.350 Compromise and compounding tax; approval by court; proceedings in case of actions or suits involving title to real property. (1) Whenever an estate, devise, legacy or beneficial interest therein, charged or sought to be charged with the inheritance tax is of such nature or is so disposed

that the liability of the same is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the State Treasurer may, with the written approval of the Attorney General setting forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; [but the settlement must be approved by the court having jurisdiction of the estate,] and [after such approval] the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

(2) In any suit or action in the circuit court of the state involving the title to real property only, in which it appears, by the pleadings or otherwise, that an inheritance tax is or might be payable to the State of Oregon by reason of the death of any person whose estate has not been administered in Oregon, such circuit court shall direct that a copy of the pleadings in such cause be served upon the State Treasurer, such service to be made as summons is served in any cause in the circuit court of this state. Thereupon, further proceedings in the cause shall be suspended until the State Treasurer has had an opportunity to appear therein, such appearance to be made within the time that is required by the service of summons upon a private person or corporation. The State Treasurer shall appear in the cause and present the claims of the state, if any, to an inheritance tax, and it is the duty

of the Attorney General of the state to represent the state and the State Treasurer in such proceedings, and the State Treasurer may, with written approval of the Attorney General setting forth the reasons therefor, compromise and compound the tax claimed to be due upon the passing of such real property. Such settlement and compromise shall be entered of record in the journal of the proceedings of such court. Thereafter the payment of the amount of taxes so agreed upon shall discharge the inheritance tax lien against the property. If a compromise is not effected, the amount of tax, if any, due upon the passing of the real property shall be determined by the circuit court as are other questions involved in such litigation, and subject to the same right of appeal to the Supreme Court. The decree of the circuit court or of the Supreme Court, if there is an appeal, is conclusive as to the amount of taxes due upon the passing of the real property and payment thereof shall discharge the lien against the property.

Section 5. ORS 118.640 is amended to read:

118.640 Evaluating particular interests. (1) [Every inheritance, devise, bequest, legacy or gift, upon which a tax is imposed under ORS 118.005 to 118.840, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable] The personal representative of the estate of a decedent shall

inventory the property of the estate as provided in ORS \_\_\_\_\_;  
provided, that when [such] the interest is contingent, defeasible  
<sup>a</sup>  
or of such/nature that its [full and] true cash value cannot  
be ascertained at the date [of decedent's death] the inventory  
is filed it shall be appraised at the time when [such] the  
value first becomes ascertainable, at its [full and] true cash  
value as of the date of decedent's death and without diminution  
for or on account of any valuation made or tax paid thereto-  
fore upon the particular estates upon which the devise [, be-  
quest, legacy] or gift may have been limited.

(2) Whenever a gift or devise of real property which is  
subject to inheritance tax passes to or vests in a husband  
and wife as tenants by the entirety, the inheritance tax  
thereon shall be determined in the same manner as though  
[each of such tenants by the entirety took an undivided one-  
half of the property as tenants in common] the grantees or  
 devisees took undivided halves of the real property as tenants  
in common.

(3) Whenever any estate or interest is so limited that  
it may be divested by the act or omission of the devisee [or  
legatee, such] the estate or interest shall be taxed as [if]  
though there were no possibility of such divesting.

(4) The value of [even] a limited estate, income, interest  
or annuity dependent upon any life or lives in being shall be  
determined by the rules or standards of mortality and of value  
used by the "Actuaries' or Combined Experience Tables,"

except that the rate of interest on computing the present value of all [such] limited estates, incomes, interests or annuities shall be four percent per year. The value of the interest or estate remaining after [such] the limited estate, income, interest or annuity shall be determined by deducting the amount found to be the value of [such] the limited estate, income, interest or annuity from the value of the entire property in which [such] the limited estate, income, interest or annuity exists.

Section 6. ORS 118.660 is amended to read:

118.660 Delivery to State Treasurer of tax return and copy of inventory and appraisalment. (1) Every [executor, administrator or trustee] personal representative of any estate subject to an inheritance tax under the laws of this state, whether or not any such tax may be payable, [as soon as practicable after the appraisalment or reappraisalment of the estate and] before the court authorizes any [payment or] distribution to the [legatees or to any parties entitled to a beneficiary interest therein] devisees, shall deliver to the State Treasurer a copy of each inventory and appraisalment duly certified to be such by the clerk of the court, or by the [executor, administrator] personal representative [or trustee personally] or [by] his attorney of record, and shall file with the clerk proof of [such] the delivery.

(2) Every [such executor, administrator or trustee] personal representative, or, if the estate is not administered, a trustee or heir of the decedent acceptable to the State Treasurer, shall, as soon as practicable, [make and] file with the State Treasurer a [schedule, list or statement,] verified return [by his oath and] in a form to be prescribed by the State Treasurer, which [schedule] shall include a statement of the name, age and relationship to the deceased of each person entitled to any [beneficiary] beneficial interest in the estate, together with the [full and] true cash value of [such] the interest, a list and description of all transfers of property, in trust or otherwise, made by the decedent in his lifetime as a division or distribution of his estate in contemplation of death or intended to take effect at or after his death, [and] such other data as the State Treasurer deems appropriate in the determination of inheritance taxes, and a computation of any tax payable. [If the estate of the decedent is subject to a tax, whether or not any such tax may be payable, but the estate will not be probated or administered, an heir of decedent, acceptable to the State Treasurer, shall file with the State Treasurer a like schedule, list or statement, containing also therein a description of the assets and the properties of the estate, the full and true values

thereof, and the items that may properly be deducted in the determination of inheritance taxes due therefrom as provided in ORS 118.070.]

Section 7. Determination of tax by State Treasurer; notice. The State Treasurer shall examine the return, and, if a copy is delivered to him, the inventory and appraisement, and shall determine the amount of the tax to which the estate is liable. If he determines that there is a deficiency in the amount of the tax as computed by the return, he shall give notice of the deficiency to the personal representative, trustee or heir who filed the return.

Section 8. ORS 118.700 is amended to read:

118.700. Filing objections to determination of tax; re-determination by court; appeal. (1) Within 60 days after the [assessment and] determination by the [probate court] State Treasurer of any tax imposed by ORS 118.005 to 118.840, or within such additional time thereafter as may be fixed by written stipulation of the parties or as may be allowed by the court, [the State Treasurer, or] any person interested therein, may file with the court objections thereto in writing, and pray for a [reassessment and] redetermination of [such] the tax.

(2) Upon [any objection] objections being so filed, the [probate] court shall appoint a time for the hearing thereof,

and cause notice of [such] the hearing to be given by mail to the State Treasurer, and to all other parties interested, at least 10 days before the hearing [thereof]. At the time appointed in [such] the notice, the court shall proceed to hear [such objection,] the objections and any evidence which may be offered in support thereof or opposition thereto. All evidence [heard on such reappraisement] shall be reduced to writing and filed with the clerk of court. [If, after such hearing, the court finds the amount at which the property is appraised is its full and true value, and the appraisement was made fairly and in good faith, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or smaller sum than the full and true value of the property, or that the same was not made fairly or in good faith, it shall, by order, set aside the appraisement and determine such value.] If, upon the hearing, the court finds that the determination by the State Treasurer of any tax imposed by ORS 118.005 to 118.840 was erroneous the court by order shall, /redetermine the tax.

(3) The State Treasurer [,] or anyone interested in the [property appraised, may appeal to the circuit court from the judgment, order and decree of the county court in the premises, and] determination of the tax may appeal to the Supreme Court from the order, [judgment, or decree] of the [circuit] probate court in the [same] manner [as is]

Inheritance Tax  
2nd Draft, 3/21/68  
Page 10

provided by law [for appeals from the county and circuit courts]. All appeals taken from the [judgment or decree] order of the court shall be had and tried on appeal in the same manner and with like effect as appeals in suits in equity are heard and tried.

Section 9. Repeal of existing statutes. ORS 118.420, 118.480, 118.500, 118.610, 118.620, 118.630, 118.650, 118.670, 118.680 and 118.690 are repealed.

Proposed revised Oregon probate code  
INHERITANCE TAX  
2nd Draft  
March 21, 1968

Prepared by  
Stanton W. Allison

#### COMMENTS

The proposed amendments and repeals of the present Inheritance Tax chapter are purely procedural. No change is proposed in the present sections on taxable property, deductions, or rates. Similarly, no changes are proposed in the chapter covering lien; payment; or compromise of tax, except as follows: in addition to purely editorial amendments, ORS 118.230 is amended to reflect the proposed determination of the tax by the State Treasurer rather than by the probate court. ORS 118.280 is amended to conform to the power of sale granted to the personal representative without court order except in certain cases.

The section on Administration of Inheritance Tax Act is not amended. However, it is proposed that ORS 118.420, 118.480, and 118.500 be repealed. ORS 118.460 now provides that full information on estates filed be furnished the State Treasurer. The need for ORS 118.420 would be eliminated by the proposed provision that the determination of the tax be made by the administrative agency and not by the probate court. The provision for applying for letters in the chapter on Initiation of Probate would permit the State Treasurer to make application as an interested person. The present provisions for furnishing information to the State Treasurer would make ORS 118.480 unnecessary. ORS 118.500 would not be applicable under the

proposed code since all probate jurisdiction is vested in the Circuit Court.

The only portion of the Inheritance Tax chapter on which substantial amendment is proposed is that headed Appraisal and Judicial Approval. The proposed amendments would provide for filing inheritance tax returns directly with the State Treasurer and for an administrative determination of the tax in the first instance by the State Treasurer and not by the Probate Court. The Probate Court would not be involved in the determination of the tax unless objections were filed to the taxes found owing by the administrative agency. The proposed amendments would provide that if objections were made to the determination of the tax by the administrative agency the matter would be set for hearing by the probate court upon due notice to the State Treasurer and to interested parties, and the court would then make a redetermination of the amount of the inheritance tax. Appeal would be from the determination by the circuit court as is now provided.

It is proposed to repeal ORS 118.610, 118.620, 118.630, and 118.650, covering inventory and appraisement, since the same subject matter is covered by Sections 9 to 14 inclusive of the chapter on Powers and Duties of the Personal Representative.

The amendments to ORS 118.640 are purely editorial.

The amendment of ORS 118.660, in addition to editorial changes, such as using the word "return" in place of "schedule,

Inheritance Tax  
2nd Draft, 3/21/68  
Comments  
Page 3

list or statement", provides that the return shall include a computation of the tax payable. ORS 118.670, 118.680 and 118.690 can be repealed because the determination of the tax would be made in the first instance by the administrative agency and not by the probate court.

Section 7 provides for a determination of the amount of the tax by the State Treasurer and for giving notice to the party filing the return if the State Treasurer finds that a deficiency exists in the tax as computed in the return.

ORS 118.700 is amended to provide for filing objections to the tax determined by the State Treasurer and for hearing and redetermination of the tax by the probate court.

Section 1. ORS 126.111 is amended to read:

126.111. Venue for appointment of guardians. The venue for the appointment of a guardian shall be:

- (1) The county where the proposed ward resides; or
- (2) [If the proposed ward does not reside in this state,] Any county in which any property of the proposed ward is located, or any county in which the proposed ward is physically present.

Section 2. ORS 126.146 is amended to read:

126.146. Service of citation; appearance. (1) The citation issued under ORS 126.131 shall require the person or institution served to appear and show cause why a guardian should not be appointed for the proposed ward:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If

the proposed ward is a missing person, citation shall be served on the missing person by publication, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a written waiver of service of citation or makes a general appearance.

Section 3. ORS 126.171 is amended to read:

126.171. Bond of guardian. Except as otherwise provided by law, every guardian shall, before entering upon his duties as guardian, execute and file in the guardianship proceeding a bond, with [sufficient] a corporate surety [or sureties] authorized to transact surety business in the State of Oregon in such amount as the court determines necessary for the protection of the ward and the estate of the ward, [and] conditioned upon the faithful discharge by the guardian of his authority and duties according to law. [The bond shall be approved by the court.] The bond shall run to all interested persons and shall be for the security and benefit of such persons. [Sureties shall be jointly and severally liable with the guardian and with each other.]

Section 4. Effective term of bond; new or additional bond. (1) The bond of the guardian shall continue in effect until his final account is approved and an order of discharge is entered, but the surety may terminate its obligation upon notice in writing to the guardian and the court specifying a date, not less than 30 days after the date of such notice, when such termination is to become effective. Prior to the date so specified the guardian shall execute and file in the proceeding a new bond by a qualified surety in like amount and upon the same conditions. If he shall fail so to do, his authority as guardian shall cease at the effective date of termination of the obligation of the surety on his bond. The letters of guardianship shall thereupon be cancelled and the guardian shall make and file his final account.

(2) The court may at any time increase or reduce the amount of the bond required for the protection of the ward and the estate of the ward, either upon its own motion or on the motion of the guardian or any party in interest.

Section 5. ORS 126.230 is amended to read:

126.230. Inventory and appraisal of ward's property.

(1) Within 60 days after the date of his appointment, or, if necessary, such further time as the court may allow, a guardian of the estate shall make and file in the guardianship proceeding a verified inventory of all the property of the ward which comes to his possession or knowledge.

(2) Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, he shall either make and file in the guardianship proceeding a verified supplementary inventory within 30 days after the property comes to his possession or knowledge, or include the property in his next accounting, but the court may order which of the two methods the guardian shall follow.

(3) The court may order all or any part of the property of the ward appraised as provided in [ORS 116.420 to 116.435] ORS \_\_\_\_\_ to \_\_\_\_\_.

Section 6. ORS 126.245 is amended to read:

126.245. Discovery of debts or property. Upon the filing of a petition in the guardianship proceeding by the guardian, the ward or any other interested person, alleging that any person is indebted to the ward, or has, or is suspected of having, concealed, embezzled, converted or disposed of any property of the ward, or has possession or knowleged of any such property or of any writing relating to such property, the court may require such person to appear and answer under oath concerning the matter, and proceed as provided in [ORS 116.310 and 116.315] ORS \_\_\_\_\_ and \_\_\_\_\_.

Section 7. ORS 126.265 is amended to read:

126.265. Borrowing money for ward. A guardian of the estate, with prior approval of the court by order, may borrow money for the account of the ward and may mortgage or pledge any property of the ward as security therefor. If the court determines that the borrowing is necessary or proper, the court shall make an order approving the borrowing. The order approving the borrowing may authorize one or more separate loans thereunder. The order shall prescribe the maximum amount of, the maximum rate of interest on and the date of final maturity of the loan or loans, and shall describe the property, if any, to be mortgaged or pledged to secure the loan or loans. Any part of any such loan at any time not fully secured is a general charge upon the estate of the ward but one who acquires an interest in any of the assets of the ward's estate for value and without actual knowledge of such charge takes free from it. [This section does not affect the application of ORS 126.406 to 126.495, so far as they relate to mortgages; but, so far as possible, the proceedings with respect to the loan or loans may be combined with the proceedings, if any, with respect to mortgages as security therefor.]

Section 8. ORS 126.406 is amended to read:

126.406. Sale or lease of ward's property; purposes. A guardian of the estate, with prior approval of the court by order, may sell[, mortgage] or lease any of the property of the ward:

(1) For the purpose of paying claims against the ward, the guardianship estate or the guardian of the estate as such.

(2) For the purpose of providing for the proper care, maintenance, education and support of the ward and of any person to whom the ward owes a legal duty of support.

(3) For the purpose of investing the proceeds.

(4) For any other purpose that is in the best interests of the ward.

Section 9. ORS 126.411 is amended to read:

126.411. Petition for sale or lease. A guardian of the estate may file in the guardianship proceeding a petition for the sale[, mortgage] or lease of any property of the ward. The petition shall include the following information, so far as known by the petitioner:

(1) The name, age, residence and postoffice address of the ward.

(2) Whether the ward is an incompetent, minor, missing person or spendthrift.

(3) The name and address of any person or institution having the care, custody or control of a ward who is an incompetent or minor.

(4) A general description and the probable value of all the property of the ward that has come to the possession or knowledge of the guardian and not theretofore disposed of, and

of all the property to which the ward may be entitled upon any distribution of any estate or of any trust.

(5) The income being received from the property to be sold[, mortgaged,] or leased, from all other property of the ward and from all other sources, and the application of such income.

(6) Such other information concerning the guardianship estate and the condition of the ward as is necessary to enable the court to be fully informed.

(7) The purpose of the proposed sale[, mortgage] or lease, a general description of the requirements for such purpose and the aggregate amount needed therefor.

(8) A specific description of the property to be sold[, mortgaged] or leased.

Section 10. ORS 126.416 is amended to read:

126.416. Sale or lease of personal property. Except as provided in ORS 126.471, if the court, upon the filing of a petition under ORS 126.411 for the sale[, mortgage] or lease of personal property, determines that the sale[, mortgage] or lease is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale[, mortgage] or lease to be made subject to such terms and conditions as the court may consider necessary or proper. The Court may, in its discretion, order a hearing upon such petition and with such notice as the court may order or without notice. If the proceeds

of the sale [or mortgage] exceed \$1,000, the guardian, within 15 days after the date of the sale [or mortgage], shall make and file in the guardianship proceeding a return of his proceedings concerning the sale [or mortgage], but such sale [or mortgage] need not be confirmed by the court.

Section 11. ORS 126.426 is amended to read:

126.426. Sale or lease for more than five years of real property; issuance of citation. (1) Except as otherwise provided in ORS 126.431 and 126.471, the court, upon the filing of a petition under ORS 126.411 for the sale [or mortgage] of real property, or the lease of real property for a term exceeding five years, shall order the issuance of a citation requiring the persons or institutions referred to in subsection (2) of this section to appear and show cause why an order for the sale[, mortgage] or lease should not be made.

(2) Citation issued under subsection (1) of this section shall be served

(a) If the ward is an incompetent, on any person or an officer of any institution having the care, custody or control of the incompetent, and on the incompetent.

(b) If the ward is a minor, on any person or an officer of any institution having the care, custody or control of the minor, and if the minor is 14 years of age or older, on the minor.

(c) If the ward is an incompetent or minor in the care,

custody or control of any institution, on any person paying or liable for the care and maintenance of the incompetent or minor at the institution.

(d) If the ward is a missing person, on the missing person and on such other persons as the court may direct.

[(d)] (e) If the ward is a spendthrift, on the spendthrift.

Section 12. ORS 126.431 is amended to read:

126.431. Service of citation; appearance. (1) The citation issued under ORS 126.426 shall require the person or institution served to appear and show cause why an order for the sale or lease should not be made:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If the ward is a missing person, citation shall be served on the

missing person by publication, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a written waiver of service of citation or makes a general appearance.

Section 13. ORS 126.436 is amended to read:

126.436. Order for sale or lease; terms and conditions.

If it appears to the court that the sale[, mortgage] or lease referred to in ORS 126.426 is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale[, mortgage] or lease to be made. A [mortgage] sale or [surface] lease ordered shall be made subject to such terms and conditions as the court may consider necessary or proper. [An order authorizing the execution of a lease or other instrument for the purpose of exploring or prospecting for and extracting, removing and disposing of oil, gas and other hydrocarbons, and all other minerals or substances, similar or dissimilar, that may be produced from a well drilled by the lessee, shall require a minimum of one-eighth royalty and shall set forth the annual rental, if any rental is required to be paid, the period of the lease which shall be for a primary term of 10 years and so long thereafter as oil, gas, other hydrocarbons or other leased substances are produced in paying

quantities from the leased premises or lands pooled or unitized therewith, or mining or drilling operations are conducted on the leased premises or lands pooled or unitized therewith, and may authorize such other terms and conditions as the court may consider necessary or proper including, without limitation, a provision empowering the lessee to enter into any agreement authorized by ORS chapter 520 with respect to the land covered by the lease, including provisions for pooling or unitization by the lessee. A sale ordered shall be made as provided in ORS 126.441 to 126.466, and subject to such additional terms and conditions as the court may consider necessary or proper.]

Section 14. ORS 126.441 is amended to read:

126.441. Public or private sale of real property; sale on credit. (1) The order for the sale of real property under ORS 126.436 or 126.471 shall direct that the sale be public or, if the court determines that it is in the best interests of the ward, private. If public, the sale shall be made in the same manner as like property is sold on execution, or, if the court determines that it is in the best interests of the ward, the court may order the property to be sold on the premises or elsewhere.

[(2) Except as otherwise provided in this subsection, before proceeding to sell real property at private sale, the

guardian shall cause a notice of the sale to be published in a newspaper published in the county in which the property is situated, or if no newspaper is published in such county, then in a newspaper of general circulation therein, once a week for four successive weeks, or four publishings in all. The notice shall include a description of the property, the place where bids will be received, the terms and conditions of the sale and that on and after a designated day certain, which day shall be not less than one week after the date of last publication, the guardian will proceed to sell the property. When the court determines from the inventory or otherwise that the value of the property does not exceed \$1,000, the court may order the sale without the publication of notice of the sale.]

[(3)] (2) When the sale of real property is upon credit, the guardian may take the promissory note of the purchaser for the deferred balance of the purchase money, with a mortgage upon the property to secure the payment thereof, or the guardian may sell the property on contract of sale, with title reserved until the deferred balance of the purchase price and interest thereon, if any, are paid.

Section 15. ORS 126.456 is amended to read:

126.456. Confirming or vacating sale of real property.

(1) Upon the hearing under ORS 126.451 of objections to the

sale of real property or in the absence of objections, the court shall make an order confirming the sale and directing the execution of a proper conveyance to the proper person by the guardian, unless the court determines that:

- (a) There was substantial irregularity in the sale;
- (b) The sum bid for the property is unreasonably less than the value of the property; or
- (c) By reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned.

(2) If the court determines that there was substantial irregularity in the sale, the court shall make an order vacating the sale and directing that the property be resold as though no prior sale had been made.

(3) If the court determines that the sum bid for the property is unreasonably less than the value of the property, the court shall make an order vacating the sale and directing that the property be resold [without further notice of sale, but] subject to confirmation as provided in this section.

(4) If the court determines that, by reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned, the court shall make an order vacating the sale, and either directing that the property be resold to the

higher bidder without further order [or notice of sale], or directing that the property be resold [without further notice of sale, but] subject to confirmation as provided in this section.

Section 16. ORS 126.471 is amended to read:

126.471. Sale or lease of property of spendthrift ward.

(1) If the court, upon the filing of a petition under ORS 126.411 for the sale[, mortgage] or lease of any of the property of a ward who is a spendthrift, determines that the ward is competent and consents to the sale[, mortgage] or lease and that the sale[, mortgage] or lease is necessary or proper for any purpose referred to in ORS 126.406, the court may order the sale[, mortgage] or lease to be made subject to such terms and conditions as the court may consider necessary, without the issuance of citation[, publication of notice of sale] or confirmation by the court. If the proceeds of the sale [of mortgage] exceed \$1,000, the guardian, within 15 days after the date of the sale [or mortgage,] shall make and file in the guardianship proceeding a return of his proceedings concerning the sale [or mortgage].

(2) In the absence of a determination by the court that the ward who is a spendthrift is competent and consents to the sale[, mortgage] or lease of his property, such sale[, mortgage] or lease may be made only as otherwise provided in ORS 126.406 to 126.495.

(3) A conveyance of real property executed by a guardian under subsection (1) of this section shall set forth the book and page of the journal of the court where the order for the sale is entered. The effect of the conveyance shall be the same as though made by the ward while not under legal disability.

(4) Within 60 days after the date of the order under subsection (1) of this section for the sale of real property of the ward situated in any county other than the county in which the order for the sale was made, the guardian shall cause to be recorded in the record of deeds of such other county a copy of the order for the sale certified by the clerk of the court.

Section 17. ORS 126.540 is amended to read:

126.540. Discharge of guardian; exoneration of sureties; vacating order. After hearing objections to the final account filed pursuant to ORS 126.338, the court, upon settlement of the final account [of a guardian of the estate] and determination that property of the ward has been delivered to the person lawfully entitled thereto, shall discharge the guardian and exonerate the [sureties] surety on his bond. [The discharge terminates the authority and duties of the guardian not previously terminated. The discharge and exoneration do not relieve the guardian or the sureties on his bond from liability

for previous acts or omissions of the guardian.] The court may, in its discretion, and upon such terms as may be just, within one year after notice thereof, vacate the order discharging the guardian and exonerating the surety when it appears that failure to object to the final account resulted from mistake, inadvertence, surprise or excusable neglect.

Section 18. ORS 126.636 is amended to read:

126.636. Conservatorship governed as guardianship of estate. Except as otherwise provided in ORS 126.606 to 126.675, a conservator shall:

(1) Have the same qualifications as a guardian of the estate;

(2) Unless otherwise provided in the petition for his appointment and by the order appointing him, be bonded as required of a guardian of the estate;

(3) Have the authority and perform the duties of a guardian of the estate; and

(4) Be subject to all other provisions of law relating to a guardian of the estate.

Section 19. ORS 126.646 is amended to read:

126.646. Sale, mortgage, lease and other disposition of ward's property. (1) Any property of the ward may be sold, exchanged, surrendered, partitioned, mortgaged, pledged or leased by a conservator in the same manner as provided by law

for the sale, exchange, surrender, partition, mortgage, pledge or lease of any property of a spendthrift for whom a guardian of the estate has been appointed.

(2) The court, by order, may authorize the conservator to continue any business of the ward solely or jointly with one or more of the ward's partners or joint venturers or as a corporation of which the ward is or becomes a shareholder. Such order may be made upon the petition for the appointment of the conservator and that he shall be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.

(3) The court, by order, may authorize the conservator to:

(a) Make reasonable gifts to charitable or religious institutions on behalf of the ward,

(b) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the ward by blood or marriage, or

(c) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for and reasonable funeral and burial expenses of persons who are or have been related to the ward by blood or marriage.

Such order may be made upon the petition for the

appointment of the conservator and that he be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.

Section 20. Accounting by conservator. (1) A conservator shall make and file a written verified account of his administration at the times and of the kind required of guardians of the estates by ORS 126.336.

(2) Before filing an account other than his final account, the conservator shall cause a copy thereof to be mailed or delivered to the ward. If the ward is incompetent, the conservator shall cause a copy thereof to be mailed or delivered to the ward's spouse who is not under legal disability and to those of the ward's children, parents, brothers or sisters who are not under legal disability and have presented a written request for a copy to the conservator and filed a copy of the request in the conservatorship proceeding before the filing of the account. Proof by affidavit of such mailing or delivery shall be filed with the account.

(3) A copy of the final account of the conservator shall be served on the ward, if living and competent, otherwise on the guardian of his estate or his personal representative and on each person to whom copies of other accounts are required to be mailed or delivered as provided in subsection (1) of

of this section. Objections thereto may be made within 30 days after service and shall be heard and disposed of by the court. When no objection is made or all just objections are satisfied, the court shall discharge the conservator and exonerate the surety on his bond. The court may, in its discretion and upon such terms as may be just, at any time within one year after entry of the order discharging the conservator, vacate such order to permit recovery against the conservator or his surety or either of them when it appears that the failure to object to the final account of the conservator resulted from mistake, inadvertence, surprise or excusable neglect.

Section 21. Repeal of existing statutes. ORS 126.011, 126.176 and 126.446 are repealed.

COMMENTS

It was the consensus of the committees that procedural amendments to the guardianship and conservatorship chapters should be enacted to bring these sections into harmony with the philosophy of the probate sections of the proposed code. Comments have been prepared discussing the amendments to have the chapter include guardianships of the estates of missing persons.

The chapter on Powers and Jurisdiction of the Probate Court provides that the Probate Commissioner may act upon uncontested petitions for appointment of guardians and conservators to the extent authorized by rule of court. The chapter also provides that jurisdiction in guardianships and conservatorships is vested in the circuit court.

The amendments, repeals and the new matter replacing the repealed sections are commented on as follows:

Section 1 amends the venue provision to simplify the initiation of guardianships. This amendment conforms to the simplified venue provisions in the proposed probate code.

Section 2 amends ORS 126.146 to supply an obvious omission in the present statute.

Section 3 requires that a guardian's bond shall be a corporate surety bond, conformable to the provisions in the probate code with respect to bonds of personal representatives. This would permit the deletion of the requirement that the bond be approved by the court.

Section 4 would replace ORS 126.176. The principal change is to enlarge the provision for termination of liability of the surety and to spell out the effect of failure to provide a substitute bond.

Section 7 amends ORS 126.265 to provide protection to a bona fide purchaser who acquires property or an interest therein which is subject to the general charge on the ward's assets provided by this section.

The amendment eliminates the reference to ORS 126.406 to 126.495 as affecting the procedure for approval of a mortgage of the ward's property. We do not see why there should be the present parallel provisions for authorizing mortgages of the ward's property. ORS 126.265 seems entirely adequate to cover the procedure for approval of mortgages of the ward's property. For this reason sections 8, 9, 10, 11, 13 and 16 are amendments to limit these sections to proceedings for sale or lease of the ward's property. The procedure for approval of mortgages is therefore covered solely by ORS 126.265.

Section 17 amends ORS 126.540 to grant finality to the discharge with a provision to protect parties who fail to object to the final account by reason of mistake, inadvertence, surprise or excusable neglect. The language is that used in ORS 18.160 concerning vacation of default judgments.

Section 18 gives the court the option of waiving the necessity of a bond in the appointment of a conservator.

Section 19 embodies in the conservatorship chapter provisions from the guardianship code authorizing the court to permit the conservator to continue the business of the ward and to apply the estate of the ward to charitable gifts and to support of relatives, as a guardian is authorized to do.

Section 20 would include in the conservatorship chapter provisions similar to those in the guardianship code covering the filing and mailing of copies of interim accounts and final account. It also includes a similar provision granting finality to the effect of the final account and relieving from a failure to object resulting from mistake, inadvertence, surprise or excusable neglect.

ORS 126.011 is repealed because this section is now outdated.

It is proposed to repeal ORS 126.446 covering the time limitation on the order for sale of real property. The present time limitation has probably caused more problems than most of the other provisions of the guardianship code. In view of the time consuming requirements for the petition, citation and order on sale of real property it seems an unnecessary burden to have to require recourse to the court for an extension of this authority.

The only other substantial amendment is that contained in section 14 which amends ORS 126.441 to delete the requirement

Guardianships and Conservatorships  
1st Draft, 3/29/68  
Comments  
Page 4

for publication of notice of sale of real property. Since the proposed probate code does not require any publication of notice of sale it would seem advisable that the guardianship sale provisions conform.