

OPINION
46-168

December 5, 1946 (OPINION)

JOINT TENANTS

RE: Personal Property of - County Court Has No Jurisdiction Over

This will acknowledge your letter of November 27 in which you inquire as to the authority of the county judge to issue an order granting the survivor of a joint cash account, a postal savings account, or joint ownership of government bonds to withdraw or cash the same upon the death of one of the joint owners. In other words you inquire whether or not you as county judge may issue an order to the survivor of two joint owners which would permit such joint owner to withdraw a cash account in the bank, procure payment of postal savings or government bonds, without probating the estate.

The county court has exclusive original jurisdiction of probates and guardianship matters. See Section 111 of the North Dakota Constitution.

Section 30-0201 of the North Dakota Revised Code of 1943 provides how jurisdiction is acquired in each proceeding in the county court. This is only by presentation of a petition by a competent party, and the issuance of a citation to and its service upon the other parties, or by the voluntary appearance and waiver of the service of citation by all the parties. Section 30-0202 of the North Dakota Revised Code of 1943 provides that: "Each application in county court shall be made by petition." The next section provides for the contents of the petition.

It is only after the county court has acquired jurisdiction of a probate of an estate, or a testamentary matter that it has jurisdiction to issue any order and then only after compliance with the statute as to the issuance and service of citation. If I understand the law correctly, the county court has no right to issue an order in any matter that is not properly before it. Accordingly, it is the opinion of this office that the county court has no right to issue an order such as you mention, and if it did issue an order to the survivor of two joint owners giving such survivor the right to withdraw a cash account in a bank, the postal savings or government bonds, such order would be a nullity.

NELS G. JOHNSON

Attorney General