



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

June 13, 1955

Mr. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. S-160

Re: Proper classification for
inheritance tax purposes
of an adopted child of a
child of a decedent.

Dear Mr. Calvert:

You have requested our opinion on the above captioned subject. The controlling statute is Article 7118 - Class A, Vernon's Civil Statutes, the pertinent parts of which are the following:

"If passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be . . ."

In order to come within the above quoted classification, an adopted child of a child of a decedent must come within the provision for "any direct lineal descendant . . . of the decedent."

You have advised us that the adopted person in question was adopted prior to the 1931 Adoption Act. A child adopted under the statutes in existence prior to the 1931 Act was entitled to certain rights of heirship only from the adopting parent or parents. As construed by the Supreme Court, the 1931 Adoption Act enlarged the rights of adopted children by providing that as between the adopting parent and the adopted child adoption created a relation in law and in fact that was the same as exists under our laws between natural parent and natural child. Hoch v. Hoch, 140 Tex. 475, 168 S.W.2d 638 (1943). However, the enlarged rights created by the Act were granted only to children adopted in accordance with the provisions of the Act, not to children adopted under the prior adoption statutes, although their rights of heirship were preserved. Hoch case, supra.

The 1951 Adoption Act has further enlarged the rights of adopted children but is likewise limited by specific terms to children adopted in accordance with its provisions.

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Thus neither the 1931 Act nor the 1951 Act effected any change in the relationship between the adopted person in this case and the parent of the adoptive parent. Neither Act created the relationship of "direct lineal descendant" between the decedent and the adopted person. You are therefore advised that said adopted person cannot be given Class A classification but must be classified for inheritance tax purposes under Article 7122 - Class E, V.C.S.

Summary

The rights of a person adopted prior to the 1931 Adoption Act were not enlarged by the 1931 or 1951 Adoption Acts so as to constitute said person a direct lineal descendant of a parent of the adopting parent. Persons adopted prior to 1931 must be classified under Article 7122 - Class E; V.C.S., for inheritance tax purposes.

APPROVED:

L. P. Lollar
Taxation Division

John Reeves
Reviewer

John Atchison
Reviewer

Robert S. Trotti
First Assistant

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *Marietta McGregor Payne*
Marietta McGregor Payne
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