

VIA AIR MAIL

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LAW OFFICES
HERVEY, DOW & HINKLE
ROSWELL, NEW MEXICO
June 18, 1949.

J. H. HERVEY
HIRAM M. DOW
CLARENCE E. HINKLE
W. E. BONDURANT, JR.

GEORGE H. HUNKER, JR.

Miss Laura Gilpin,
c/o Miss Brenda Putnam,
356 West 22nd Street,
New York 11, N. Y.

Re: Opinion No. 9078
S $\frac{1}{2}$ Section 23, Twp. 11 S., Rge. 32 E.
Re: Francis Gilpin, Jr.

Dear Miss Gilpin:

Thank you for your letter of June 15, 1949. From the Colorado Probate Transcript I note that your father died July 7, 1943. In your letter you state that your brother, Francis Gilpin, Jr., died April 12, 1945. It, therefore, appears that your brother survived your father. In New Mexico the testator must name each of his children in his Will, and failing in such said child takes the same interest as though the testator had died without a Will. Your brother is not named in your father's Will, and, consequently, it is our opinion that since he survived your father he took the aforesaid share in the estate which is apparently a 1/2 interest. From the facts now available to us it is our opinion that this 1/2 interest is vested in the heirs or devisees of your brother. The only thing that I see which could refute the foregoing would be the fact that your brother gave you a deed or filed some instrument in the Colorado probate disclaiming and waiving his interest in the estate.

In order to save you expense we did not purchase a complete transcript of the Colorado proceedings, but after you have considered the foregoing you might deem it advisable to purchase such a transcript, since it might reflect some instrument which your brother filed in this probate.

In the event your brother has not divested himself of his interest, then it is our opinion that his interest would be vested in his heirs at law, or in the persons to whom he willed the land, if he had a Will. Before we can intelligently proceed in the matter the foregoing questions will have to be settled, and if your brother did inherit a 1/2 interest we must have the names and addresses of his children, together with any information as to whether he left a Will, and whether the same was probated.

Yours very truly;

HERVEY, DOW & HINKLE

By

W. E. Bondurant, Jr.

WEB:MC