

criminal order books, which are public records open to the inspection of the public. It has been the practice in this state for circuit courts to have separate juvenile minute books and separate juvenile order books. Section 9-3114, Burns' 1942 Replacement (Supp.), provides, 'Such records shall be open only by order of the court to persons having a legitimate interest.' Section 9-3215, Burns' 1942 Replacement (Supp.), requires only such persons be admitted at the hearing as have a direct interest in the case, and prohibits the use of the evidence given in any case or proceeding in any other court. The fact that the record was made in an improper order book, however, does not affect the jurisdiction of the court. * * *"

An analysis of the above-quoted statutes, when read together, and by giving due consideration to the Indiana Supreme Court case referred to herein, leads me to the conclusion, and it is my opinion, that adjudications rendered in juvenile court hearings *may* be made a matter of public record, but only in those cases where such court so orders and directs.

OFFICIAL OPINION NO. 47

September 25, 1961

Mr. T. Michael Smith, Administrator
Inheritance Tax Division
106 State Office Building
Indianapolis 4, Indiana

Dear Mr. Smith:

This is in response to your request for an Official Opinion concerning the time at which "interest begins to accrue" pursuant to the Acts of 1931, Ch. 75, Sec. 38, as found in Burns' (1953 Repl.), Section 7-2438.

Although this is a part of the Indiana Inheritance Tax Law, being the Acts of 1931, Ch. 75, as found in Burns' (1953 Repl.), Section 7-2401 *et seq.*, it should be noted in the beginning that this section is not to be confused with Section 13 of

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that Act, as found in Burns' (1953 Repl.), Section 7-2413, which provides for interest to be "charged and collected * * * from the time the tax accrued" upon the tax imposed by and upon the transfers defined in Section 1 of the Act, as found in Burns' (1953 Repl.), Section 7-2401, if the tax upon such transfers is not paid within eighteen months *supra*, it has heretofore been held in 1955 O. A. G., pages 91, 94, No. 24, that:

"It is to be noted from the above-quoted section that, whenever interest is due, it runs from the date of accrual which can only mean the date of the death.
* * *"

Because that 1955 O. A. G. was concerned only with Section 13, *supra*, it would not necessarily be controlling with respect to the question now presented which concerns an entirely different section of the inheritance tax statute.

Section 38 of the Inheritance Tax Law, with which your question is concerned, and as found in Burns' (1953 Repl.), Section 7-2438, *supra*, imposes:

"An *additional* inheritance tax shall be and is hereby imposed upon all estates which are subject to an estate tax under the provisions of the United States Revenue Act of 1926 where the decedent at the time of his decease was a resident of this state. * * *"
(Our emphasis)

This section very clearly imposes a separate tax, the amount of and liability for which are made to depend upon the estate being subject to the estate tax imposed under the provisions of the United States Revenue Act of 1926, as amended, and dependent upon the decedent at the time of his decease being a resident of Indiana. The declared purpose of this section, as stated in Section 40 of the Act, as found in Burns' (1953 Repl.), Section 7-2440, is so that Indiana may obtain the benefit of the credit allowed under the provisions of Title III, Section 301, Subsection (b) of the United States Revenue Act of 1926, to the extent that this state may be so entitled by the provisions of said federal act by imposing additional taxes. The accrual date at which time the *additional* inheritance tax, based upon

the federal estate tax, becomes due is stated in the second grammatical paragraph of Section 38 of the state law, as found in Burns' (1953 Repl.), Section 7-2438, which provides as follows:

“The tax imposed by this section shall become due and payable to the state board of tax commissioners on or before the expiration of two [2] years from the date of the death of said decedent. Executors, administrators, trustees, grantees, donees, beneficiaries and surviving owners shall be and remain liable for the tax until paid and said tax shall be a lien on all property of the estate until paid. If the tax is not paid when due interest at the rate of ten [10] per cent per annum shall be added and become a part of said additional tax. The state board of tax commissioners may for cause shown extend the time for payment with or without interest for such period or periods as the circumstances, in the judgment of said board, require.” (Our emphasis)

The holding in 1955 O. A. G., No. 24, *supra*, that the interest, to which Section 13, as found in Burns' (1953 Repl.), Section 7-2413, refers, runs from the date of the transferor's death, if not timely paid, as provided in that section, is because of the theory necessitated principally by Section 31 following. With respect to the tax upon the transfers defined in Section 1 of the Act, as found in Burns' (1953 Repl.), Section 7-2401, it has been held that the tax is upon the transfers effected or motivated by death and that such taxes accrue upon the date of death. This results from the statutory provision of Section 31 of the Act, as found in Burns' (1953 Repl.), Section 7-2431, which expressly states:

“All taxes, imposed by this act [§§ 7-2401—7-2442], shall be due and payable at the time of the transfer, except as herein provided.” (Our emphasis)

Indiana Department of State Revenue v. Kitchin
(1949), 119 Ind. App. 422, 86 N. E. (2d) 96.

By contrast, the *additional* tax imposed by Section 38, *supra*, is specifically stated as being due and payable “on or before

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the expiration of two years from the date of the death of said decedent.”

Therefore, when the act provides that if that tax is not paid when due, it clearly means that if such tax is not paid on or before two years after the death of said decedent, then the interest thereon runs from said due date. As a consequence, it is clear that this section, by its express terms, means that any interest which may be due and payable under Burns' 7-2438, *supra*, begins to accrue on the day following the expiration of two years from the date of the death of said decedent.

OFFICIAL OPINION NO. 48

September 26, 1961

Mr. Arthur Campbell, Commissioner
Department of Correction
804 State Office Building
Indianapolis, Indiana

Dear Mr. Campbell:

This is in answer to your letter requesting an Official Opinion as to the correct method of computing maximum release dates for the individual inmates of our penal institutions who have been incarcerated by virtue of the revocation of probation or the revocation of a suspended sentence. The questions you have asked are:

“(1) When the probation of an individual is revoked and he is incarcerated, does his sentence start from the date of the original imposition of the sentence, or does it instead start from the date of the revocation of probation? In other words, should time spent under the restrictions implicit in probation be deducted from the sentence?

“(2) Are the terms ‘probation’ and ‘suspended sentence’ used synonymously? If not, from what point in time should a sentence be computed for an individual whose suspended sentence was revoked?”