

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 172

TO: R. F. Martin, Director

FROM: W. D. Holoman, Chief Counsel

SUBJECT: Interpretation – General Statutes Chapter 59 – Partnerships

Mr. Pearce's memorandum to Mr. Pitman dated November 23, 1960 raised certain questions with respect to partnerships. Chapter 59 is the chapter in the General Statutes dealing with partnerships. The Uniform Partnership Act is Section 59-31 through 59-84.1.

Section 59-59 provides as follows: "The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." Section 59-60 provides as follows: "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed." Section 59-61 provides that: "Dissolution is caused: (1) By the death of any partner, unless the partnership agreement provides otherwise; * * *"

Section 59-63 provides, in effect, that except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority for any partner to act for the partnership when the dissolution is by such act, bankruptcy, or death of a partner.

Section 59-66 provides that the dissolution of the partnership does not of itself discharge existing liability of any partner. The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

Section 59-67 provides that, unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner has the right to wind up the partnership affairs, provided, however, that any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

Section 59-71 deals with the liability of persons continuing the business in certain cases. In effect, this section provides that when a new partner is admitted into an existing partnership or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of

the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business. It is also provided in that section that when any partner retires or dies and the business of the dissolved partnership is continued with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in the partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

Section 59-74 provides, in effect, that upon the death of any member of a partnership, the surviving partner shall, within thirty days, execute before the Clerk of Superior Court a bond with sufficient surety for the faithful performance of his duties for the settlement of the partnership affairs.

Section 59-76 provides, in effect, that when a member of any partnership dies, the surviving partner, within sixty days after the death of the deceased partner, together with the personal representative of the deceased, shall make complete inventory of the assets of the partnership, together with a schedule of the debts and liabilities thereof, a copy of which shall be retained by the surviving partner and a copy shall also be furnished to the personal representative of the deceased partner. There are provisions also which provide for the inventory when the surviving partner fails to make such inventory.

Section 59-78 provides, in effect, that every surviving partner, within thirty days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within twelve months from the date of the first publication of such notice.

There are certain provisions for the purchase by the surviving partner. Then Section 59-82 provides that if the surviving partner does not purchase the interest of the deceased, he shall within twelve months from the date of the first publication of the notice to creditors file with the Clerk of Superior Court an amount stating his action as surviving partner and shall come to a settlement with the executor or administrator of the deceased partner.

In answer to Mr. Pearce's memorandum, I will state that the partnership is dissolved immediately upon the death of any partner. The surviving partner then has twelve months within which to settle estate as outlined above. If, by assignment or consent of the personal representative of the deceased partner, the business is continued without liquidation of the partnership affairs by the surviving partner or by a new partnership whereby the surviving partner may take in an additional partner, then the creditors of the first or dissolved partnership are also the creditors of the

partnership so continuing the business. Even if there is no assignment by the personal representative of the deceased but with the consent of the personal representative of the deceased for the surviving partner to continue the business, the creditors of the person or partners continuing the business shall be as if such assignment had been made.

In respect to Mr. Pearce's memorandum, the surviving partner or partners may continue the business without the consent of the personal representative of the deceased or without assignment, but under such circumstances only for the purpose of winding up the estate of the partnership. The surviving partner or partners, when winding up the affairs of the partnership, take possession of the partnership assets solely for the purpose of winding up the partnership, and title to the partnership property vests at once in the surviving partner and not in the personal representative of the deceased. Sherrod v. Mayo, 156 N.C. 144.

Section 59-66(d) provides that the individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner, but subject to the prior payment of his separate debts.

In reference to the third paragraph of Mr. Pearce's memorandum, he is correct that the heir of the deceased partner, who may by will inherit the assets of the deceased partner, will not automatically become a partner of the surviving partner or partners. The heir could become a partner by buying into the new partnership and continuing on, but even then that would not relieve the surviving partner or partners of the responsibility of settling with the estate of the deceased partner.

Mr. Perce is correct in his statement in the fourth paragraph of his memorandum when he stated that the administrator or administratrix cannot be considered in the place of the deceased partner as the title to all the property vests into the surviving partner or partners and not in the personal representative of the deceased.

In respect to the fifth paragraph of Mr. Pearce's memorandum where there is a three-way partnership and one partner dies, upon the death of that one partner the partnership is dissolved by Statute. If the surviving partners continue to operate that business only for the purpose of winding up the affairs of the three-way partnership, no new number shall be assigned, and it is not necessary to transfer reserve accounts, and the surviving partners retain the same rate only for the purpose of winding up the business. If, however, there is an assignment by a personal representative of the deceased to the surviving partners and if no assignment but by consent, the personal representative consents for the surviving partners to continue the business, not for the purpose of winding up the affairs, then a new number should be assigned and the transfer of the reserve account may be made in the usual manner. Either one of the surviving partners can sign as the transferring employer and as the

acquiring employer as the surviving partner or partners by Statute is vested with the authority to wind up the business of the former three-way partnership.

In other words, if the surviving partner is merely winding up the affairs of the partnership, no new number is necessary, and he retains the rate of the former partnership until the business of the partnership is liquidated.