

6353 Lulinary



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

September 9, 1997

Douglas Graffagnino, Chief of Police  
Seneca Police Department  
P. O. Box 4773  
Seneca, South Carolina 29679-4773

Re: Informal Opinion

Dear Chief Graffagnino:

You have asked that I review the situation involving so-called "lost and found" property turned in to your Department by persons who have come upon the property. Apparently, among this property is a variety of items including personalty. Also cash money has been turned in by the finder. You wish to know how such property should be legally disposed of. You have referenced S.C.Code Ann. Sec. 27-18-10 (Uniform Unclaimed Property Act).

**Law / Analysis**

The common law of lost and abandoned property is the starting point for our analysis. The law defines "abandoned property" as "that to which the owner has voluntarily relinquished all right, title claim and possession, with the intention of terminating his ownership, but without vesting ownership in any other person, and with the intention of not reclaiming any future rights therein, as by reclaiming future possession or resuming ownership, possession, or enjoyment of the property." 1 Am.Jur.2d, Abandoned, Lost and Unclaimed Property, § 1. With respect to abandoned property, the owner intends "to forsake and desert it."

On the other hand, "lost property" is property "which the owner has involuntarily parted with through neglect, carelessness, or inadvertence." Property is deemed "lost" in the eyes of the law "when it is unintentionally separated from the dominion of its owner."

Id. at § 4. Lost property is always involuntarily parted with, as opposed to "abandoned" property which is intentionally and voluntarily discarded. Id.

The law also categorizes certain property as "misplaced." This is property which is "intentionally put into a certain place and later forgotten." Id. at § 6. Thus, where the property is found is often important in determining whether to consider it "lost" or "misplaced." It is generally held that where "articles are accidentally dropped in any public place, public thoroughfare, or street, they are lost in the legal sense."

Finally, is the category of "unclaimed intangible property." It is generally recognized that

[t]wenty-two jurisdictions have adopted the Uniform Unclaimed Property Act, which provides a comprehensive scheme regulating the disposition of various categories of deemed abandoned, intangible personal property. Under the Act, "intangible property" includes:

monies, checks, drafts, deposits, interest, dividends, and income; credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances; stocks and other intangible ownership interests in business associations; monies deposited to redeem stocks, bonds, coupons and other securities, or to make distributions; amounts due and payable under the terms of insurance policies; and amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits. Under the Uniform Act, abandonment is presumed after the statutorily mandated period of dormancy expires. The presumption of abandonment is statutory, and, therefore, independent of common-law principles of abandonment.

South Carolina has adopted the Uniform Unclaimed Property Act, which is presently codified at Section 27-18-10 et seq. of the Code. Section 27-18-30 (A) presumes abandonment of property to encompass "all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued or owing in the ordinary course of a holder's business, and has remained unclaimed by the owner for more

than five years after it became payable or distributable ...." Subsection (B) of Section 27-18-30 states that property is "payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or present any instrument or document required to receive payment." Section 27-18-20 (13) defines "owner" to include "a person having legal or equitable interest in property subject to this chapter or his legal representative."

With respect to lost property, the common law mandated that "[t]he finder of lost property does not acquire absolute ownership, but acquires such property interest or right as will enable him to keep it against all the world but the rightful owner." *Id.* at § 18. In an opinion of this Office, dated September 25, 1964, we recognized this rule, stating that

[t]he distinction between loss and abandonment of property is that the first is involuntary and the second is by intent or design. Foulke v. N.Y. Consol. R. Co., 228 N.Y. 269, 127 N.E. 237, 9 A.L.R. 1384.

A finder of lost goods has title superior to everyone but the true owner.

And our Court, long ago, applied this well-recognized rule. In Bone v. Hillen, 1 Mill Const. 197 (1817), plaintiffs found a raft floating on the Pee Dee River. They carried the raft to Georgetown and delivered it to the defendant who gave them a receipt therefor. Defendant subsequently sold the raft after no owner thereof appeared. Plaintiffs demanded the proceeds obtained by the defendant, but the defendant refused.

The Court ruled that the plaintiffs were entitled to the proceeds from the raft's sale. Concluded the Court,

[t]he plaintiffs, having obtained possession of the property honestly, and legally, were entitled to hold it against all the world, except the right owner; and as no better owner had appeared, it was fair to presume there was none. If the defendant had taken it tortuously, the plaintiffs could have maintained an action against the value of it ... .

*Id.* at 199. Thus, the Court affirmed the trial judge who had instructed the jury that the plaintiffs had a right to recover.

One other statute should be referenced Section 27-21-20 provides as follows

(A) If property has been recovered by a sheriff of a county or chief of police of a municipality and ownership is ascertained:

(1) The sheriff or chief of police shall notify the owner no later than ten working days after a recovery that the property has been recovered and may be reclaimed.

(2) An owner of the property must be notified by certified mail that his property has been recovered. The notice must contain a list of the specific items. An owner has sixty calendar days in which to claim the property. The notice also must include a statement that, if the property is not claimed within sixty calendar days, the property will be sold at public auction to the highest bidder.

(B) The sheriff of a county or chief of police of a municipality may sell at public auction any recovered stolen or abandoned property after he has held it for sixty days and declared it abandoned by the jurisdiction. The sheriff or chief of police shall make a diligent effort to ascertain the true owner of the property and at least twice before the sale advertise the property with its full description in a newspaper having general circulation in the county or municipality having jurisdiction of the property and post the advertisement in the sheriff's office or the police department and at the courthouse. At any time after thirty days have elapsed after publication of the second advertisement, the sheriff or chief of police may sell to the highest bidder at a place designated by the sheriff or chief of police the abandoned or recovered stolen property as advertised. The sheriff or chief of police shall turn over all proceeds of the sale to the county or municipal treasurer who shall pay any debts incurred in holding the sale and then shall place the final proceeds in a special fund.

(C) If after diligent efforts the owner of the property cannot be ascertained or if the property is not reclaimed or sold at public auction, the sheriff of a county or chief of police of a

municipality may dispose of any recovered stolen or abandoned property as provided in this subsection.

(1) Property that is not suitable for sale, including, but not limited to, clothing, food, prescription drugs, weapons, household cleaning products, chemicals, or items that appear nonusable, including, but not limited to:

(a) electric components that appear to have been skeletonized, where parts have been removed and are no longer in working order; or

(b) items that have been broken up and only pieces exist may be destroyed by the jurisdiction holding the property.

(2) The sheriff or chief of police may use any property recovered by his jurisdiction if the property is placed on the jurisdiction's inventory as property of the jurisdiction.

(3) The sheriff or chief of police, with the consent of the appropriate governing body, may turn over to any organization exempt from tax under Section 501(c)3 of the Internal Revenue Code of 1986, items of abandoned or recovered property that may be used for the betterment of that organization. However, the accrued value of the items given to an individual organization as provided above by a sheriff or chief of police shall not exceed a value of one thousand dollars in the respective government entity's fiscal year.

(D) A jurisdiction recovering property pursuant to the provisions of this section shall maintain a permanent record of all property recovered and its disposition.

This relatively new provision of the Code is summarized by one writer as follows:

[u]nder Section 27-21-20 (A) of the South Carolina Code, if property is recovered by a sheriff or chief of police and the name of the owner is known, the owner must be notified by certified mail within 10 days after recovery that the property may be reclaimed.

If ownership is unknown, however, the sheriff or chief of police shall advertise the property at least twice before any sale of the property and shall fully describe the property in the newspaper and post a copy at the courthouse and police station. At any time after 30 days after publication, the sheriff or chief of police may sell the property at public auction. Before the property can be sold at public auction, however, it must have been held for sixty days and declared abandoned by the jurisdiction. All proceeds shall be turned over to the county or city treasurer who shall hold the funds. Within one year of the sale, the true owner may apply for the net proceeds.

9 S.C. Juris. § 20.1 (1994 Supplement).

I am not aware of any South Carolina case or opinion of this Office which has interpreted the applicability of either Section 27-18-10 et seq. or 27-21-20 to your type of situation involving the finding of lost property which is turned over to the police. Upon reflection, however, I am doubtful that either statute is applicable to that specific factual scenario. Assuming the applicability of either statute, however, there is authority which deems the finder of lost property as the "owner" thereof in the absence of the true or rightful owner coming forward.

With respect to Section 27-18-10 et seq. (Uniform Unclaimed Property Act of 1981), such statute principally embraces intangible personal property. Thus, it would generally not be applicable to tangible personal property (such as bicycles, etc.). Moreover, such statute specifically deals with "abandoned" property and does not expressly mention "lost" property. Furthermore, Section 27-18-30 (A) states that "... all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued or owing in the ordinary course of the holders business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned, such language does not squarely cover truly lost property that happens to be turned over to the police by the finder. The objective of the Uniform Unclaimed Property Act is

... 'to protect unknown owners by locating them and restoring their property to them and to give the state rather than the holders of unclaimed property the benefit of the use of it, most of which experience shows will never be claimed.' (emphasis added).

Bank of America Nat. Trust and Savings Assn. v. Cranston, 252 Cal.App.2d 208, 60 Cal. Repr. 336 (1967).

Likewise, the applicability of Section 27-21-20 is certainly open to question. First of all, such statute speaks in terms of "property ... recovered by a sheriff of a county or chief of police of a municipality ... ." In the situation you present, the chief of police is not really "recovering" the property, but merely assuming custody thereof at the behest of the finder. Moreover, the title of Act No. 405 of 1992 [when Section 27-21-20 was substantively amended] reflects that the General Assembly was concerned with "stolen or abandoned property." While the text of the Act speaks of "property recovered by a sheriff of a county or chief of police of a municipality," lost property turned over to law enforcement authorities does not, in other words, appear to be the situation with which the Legislature was concerned.

Even if either of the foregoing statutes is applicable to a finder of lost property, however, there is authority which construes the finder as the "owner" of such property if the real owner does not come forward to claim the property pursuant to the particular statutory requisites. In Powell v. Four Thousand Six Hundred Dollars, 904 P.2d 153 (Okl. 1995), for example, passersby spotted abandoned money in the street and turned it into law enforcement authorities. The finder told the deputy that they wanted the money if no one claimed it. After six months time, the Sheriff's Department commenced an action to obtain permission to deposit the money into a special fund for the benefit of the Sheriff's Department. The Sheriff contended that, pursuant to a statute, the Sheriff could apply for court authority to deposit money "which has come into his possession" into the Sheriff's Training Fund. Such statute expressly provided that all money which came into his possession, "whether said money be stolen, embezzled, lost, abandoned or otherwise" was authorized to be deposited in such Fund, where the owner thereof was not known or had not claimed the money after the sheriff had held the funds for at least six months.

On the other hand, the finders of the money relied upon the common law's delineation of a finder's right to assert a claim to the found property against all the world, except the true owner. The Court thus noted that "[t]wo issues are presented here for us to resolve: first, whether the finder of lost property may qualify as an 'owner' of the property and so obtain sufficient legal rights in the property which would defeat a sheriff's application under O.S. 1991 § 1325 [Training Fund statute] and, second (assuming we give an affirmative answer to the first issue) whether the Hoels qualify as 'finders' of the money." 904 P.2d at 154. Concluding that both questions should be answered "yes," the Court thus held that they money should be awarded to the finders. In this regard, the Court concluded as follows:

[t]he first issue has not been previously decided in this state. However, we conclude that the Appellants, if they qualified as finders of the money, acquired a sufficient ownership interest in the money to be "owners" of the money as that term is used in the unclaimed property statute. The Legislature did not intend to negate the common or statutory law granting legal rights to finders of lost property. By interpreting the unclaimed property statute in this manner, both legal principles at issue here can be harmonized without undue violence to either. The Alabama Court of Appeals reached a similar in Smith v. Purvis, 474 So.2d 1131 (Ala. Civ. App. 1985), in which the court rejected the sheriff's assertion of an unclaimed property ordinance as a defense to two brothers' action against him for conversion. The plaintiffs had found a boat lying beside an Alabama highway and took possession of it. Coming upon two deputy sheriffs, they stopped to discuss the boat, and the deputies (over the brothers' objection) impounded the boat and held it to await a claim from the true owner. Yet, when no such claim was presented, the sheriff apparently refused to relinquish the boat to the finders. In Alabama, as here, a statute exists which renders one who takes charge of lost property a depository for the true owner .... Recognizing that such statute could be read to conflict with the local claimed property ordinance, the court concluded that the two acts could be harmonized by a construction that it was the intention of the legislature in the one instance to provide for the disposition of lost property found by a citizen who did not wish to keep it and in the other instance to authorize a citizen who found lost property and wanted to keep it to go against the wishes of everyone except the true owner ... .

Having decided that a finder of property acquires rights which are superior to the sheriff's rights under the unclaimed property statute, we must next determine whether Appellants qualify as "finders" under the circumstances presented in this case. It is stated by general authorities that the finder of lost property is one who first reduces it to possession, e.g., see 1 Am.Jur.2d, Abandoned, Lost, and Unclaimed Property § 18 at 18 (1962), or at least such possession of the thing as its nature and circumstances will permit, 1 36A C.J.S. Finding Lost



Goods § 2 (1961). Section 511 of title 15 expresses a related notion in its opening clause; thus, in order to obtain the rights of a finder under that statute, one must "take charge" of it.

In this case it is undisputed that Mr. Hoel and his eldest son returned to where the money had been discovered in order to prevent any third person from interfering with recovering of the money. We should not penalize the Appellants for their legitimate concern that the money might have some evidentiary value. In fact, the deputy who subsequently appeared on the scene directed Appellants not to pick up the money, precisely because of the possibility it might bear fingerprints or trace evidence. Under these rather unique circumstances, we hold that Appellants "took charge" of the money before the deputy sheriff arrived, and so acquired the rights of a finder under our statutory and common law. [citations omitted] ... .

I am of the view that the Powell case and the Purdy decision represent a reasonable approach to your problem. Even if Section 27-21-20 is deemed applicable, the finder of lost goods who turns the property in to your Department could be deemed the "owner" for purposes of the abandonment statute. In other words, if, after the statute is complied with (making a diligent effort to ascertain the true owner by twice advertising in a newspaper of general circulation and posting the advertisement as specified in the statute), if the real owner does not come forward, then the finder of the property who makes a claim thereto would then be deemed the "owner" of the property for purposes of the statute. As noted above, the finder holds title against the world other than the "true owner." The property could then be turned over to the finder at the point that compliance with the statute locates no true owner. If, on the other hand, no claim is made to the particular property by the finder, then it could be disposed of pursuant to Section 27-21-20, i.e. sale, with proceeds going to the city treasurer. Assuming also the improbable situation where a finder of money makes no claim thereto, the money could be turned over to the city treasurer or county treasurer without a sale as, obviously, it would make no sense to sell money.

I fully realize that there is no case law in South Carolina resolving your problem. Thus, my reasoning herein is based entirely upon trying to solve a difficult problem without any governing state case law. Certainly, the approach outlined above is the way a few other jurisdictions have resolved the problem and this solution (treating the finder as "owner") give fair consideration to the honest finder who turns in property to law enforcement officials and does not punish him for his honesty. Obviously, a final solution

Chief Graffagnino  
Page 10  
September 9, 1997

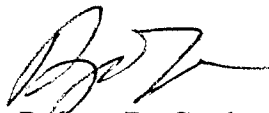
could be brought about through a declaratory judgment action wherein the court rather than an opinion of this Office makes a determination of disposition of the property.

In conclusion, absent a declaratory judgment action to resolve your question with finality, I am inclined to treat the finder of lost property as the "owner" thereof for purposes of Section 27-21-20, in the absence of the real owner coming forward to make a claim. This solution preserves the common law doctrine that the finder has title against the world except the true owner and rewards, rather than punishes, the honest finder for coming forward to law enforcement authorities. I do not deem Section 27-21-20 as attempting to repeal the common law doctrine in South Carolina. Legislation which is in derogation of the common law must be strictly construed and not extended beyond the clear legislative intent. Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968). Therefore, if the abandonment statute is followed and no true owner comes forward to claim the property, it is my opinion that the "owner" next in line should be deemed the finder who turns the property in to you.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an