

1974 S.C. Op. Atty. Gen. 333 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3899, 1974 WL 21395

Office of the Attorney General

State of South Carolina

Opinion No. 3899

December 4, 1974

**\*1 Funds held by State officials and not held in the hands of an administrator cannot be excheated but should be remitted to the Tax Commission under the terms of the Abandoned Property Act.**

Sumter County Attorney

This letter is written with regard to the proper disposition of certain funds now being held by the Probate Judge of Sumter County. The funds, in the amount of \$611.31, were sent to the Probate Judge by the State Department of Mental Health. The money represents the balance of personal funds above costs of care and maintenance of Edward Dick, who died while a patient at the State Hospital.

The question presented is whether the funds are subject to escheat or whether they can be reported and remitted to the Tax Commission under the terms of the Disposition of Unclaimed Property Act contained in Sections 57–240.1, et seq., of the Code. Provisions for the escheat of personal property are contained in Sections 57–240.1, et seq., of the Code. Section 57–240.1 provides that an escheat action shall be brought ‘when any moneys \* \* \* shall be found in the hands of an executor or administrator \* \* \*.’ There has been no administration of Mr. Dick's estate. The funds are therefore not in the hands of an administrator and until they are, no suit can be maintained for their escheat. The case of *Gill v. Douglass*, 2 Bailey 387, Book 8, S. C. Reports, 180 (Law), specifically so holds.

The Disposition of Unclaimed Property Act was enacted in 1971. It repealed the existing escheat law. However, the provisions for escheat were reenacted with the provision that the escheat law is complementary to and not is derogation of the Unclaimed Property Act. See Section 57–220.9 of the Code, which states:

‘All personal property for which provision is made in (the Disposition of Unclaimed Property Act) shall be disposed of as therein provided.’

Section 57–240.8 of the Unclaimed Property Act provides that all intangible personal property held for the owner by a ‘public authority or public officer of this State’ that has remained unclaimed by the owner for more than seven years is presumed abandoned. The Department of Mental Health is a public authority of this State. No person has made a claim with the hospital for these funds and the records of the hospital do not show any person who may have a claim to the funds. The funds have not been held by the Hospital for seven years; however, Section 57–240.13 of the Code provides that if a holder of property described in the Act has reason to believe that the owner cannot be located with reasonable diligence, the holder can report and deliver the property to the Tax Commission before the expiration of the abandonment period. The absence of any person entitled to claim the funds in question would be sufficient ‘reason to believe’ that persons having a legal interest in the funds could not be located.

The question of whether the escheat laws, or in the alternative, the Unclaimed Property Act, applies to the funds in question is not free from doubt. However, the intention of the legislature is clear that the escheat sections are complementary to the Unclaimed Property Act. In the case at hand there has been no administration of the estate and under these circumstances an escheat action would be premature. It is the opinion of this office that the funds in question are covered by the Unclaimed Property Act and that they can be reported by the Department of Mental Health under the terms of that Act.

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