

1972 S.C. Op. Atty. Gen. 10 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3232, 1972 WL 20380

Office of the Attorney General

State of South Carolina

Opinion No. 3232

January 1, 1972

***1 Funds held by a federal credit union on ceded property in South Carolina should be remitted to the Tax Commission when the funds represent abandoned deposits of depositors whose last known addresses are in South Carolina.**

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This is in reply to your letter of October 29, 1971 in which you request an opinion of this office concerning the recently enacted Disposition of Unclaimed Property Act. Specifically you ask whether a Federal Credit Union located on Shaw Air Force Base should remit abandoned deposits to the State of South Carolina. The last known address of many of the depositors is South Carolina.

Section B(2) of the Act states that any abandoned funds which were paid in this State toward the purchase of shares in a financial organization (specifically including credit unions) or any deposit made therewith and any interest or dividend which has accrued thereon are to be turned over to the South Carolina Tax Commission.

The question of a state's jurisdiction under these circumstances appears to be a novel one in that no authority has been found which is specifically in point. In [United States v. Klein](#), 303 U. S. 276, 58 S. Ct. 536 (1938) the Supreme Court held that a state had authority to escheat moneys deposited in the registry of a federal court. The court stated that although the federal court was said to have 'exclusive jurisdiction' of the funds, other courts having jurisdiction to adjudicate rights in the property did not, because the property was possessed by the federal court, lose power to render any judgment not in conflict with the federal court's authority.

An escheat proceeding is an action in rem. See [Security Savings Bank v. California](#), 263 U. S. 282, 44 S. Ct. 108 (1933), [United States v. Klein](#), supra. The Supreme Court held in [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U. S. 541, 68 S. Ct. 682 (1947) that a state had constitutional power to escheat claims owed to residents of that state when the claim matured even though the debtor was a foreign corporation.

The Court stated:

'We see no constitutional reason why a state may not proceed administratively, as here, to take over the care of abandoned property rather than to adopt a plan through judicial process * * *.'

It was stated in [Application of People of the State of New York](#), 138 F. Supp. 661 (1956) that a state's right to escheat is the right of an ultimate heir, and that the state does not assert a separate claim to the fund but stands in the shoes of those unknown creditors who are deemed to have abandoned their claims. The Third Circuit has said that a state, under an escheat proceeding, is entitled as *parens patriae* to assert the claim of the missing claimant to the moneys in question. See [In Re Moneys Deposited](#), 243 F. 2d 443 (3rd Cir. 1957). In that case the court also stated that it is doubtful whether the United States even has standing to oppose a state claim for funds held by a federal court when the United States has not asserted a right to the funds.

*2 It is recognized that the funds in question are located on territory over which the State of South Carolina has ceded jurisdiction to the United States, Section 39–132 of the Code so provides. However, in those instances in which the depositors' last known address was South Carolina a chose in action in the nature of a debt was located in this State. The leading case on a states' jurisdiction over intangibles is *Curry v. McCannless*, 307 U. S. 357, 59 S. Ct. 900 (1939). There the court held that intangibles may be taxed at the domicile of the owner even though physically located in another state. The basis of the decision was that the state of domicile of the owner of the intangibles had afforded protection and benefits to the owner and therefore that state had sufficient contacts to satisfy the requirements of the Due Process Clause.

In *Texas v. New Jersey*, 379 U. S. 674, 85 S. Ct. 626 (1965) the Supreme Court held that the state of the creditor's last known address was the proper state to escheat funds held by a debtor corporation. The court in adopting this rule stated that the debt was an asset of the creditor.

The South Carolina Disposition of Unclaimed Property Act is a custodial statute under which the state steps into the shoes of the absentee owner of the abandoned deposit. The authorities cited above relating to escheat statutes are equally applicable to custodial statutes.

It is therefore the opinion of this office that the credit union should remit abandoned deposits when the last known address of the depositor is South Carolina.

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