



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 12, 1978

ATTORNEY GENERAL OPINION NO. 78- 182

Sheriff F. T. "Jim" Chaffee
Shawnee County Sheriff's Department
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Jails--Disposal Of Unclaimed Inmate Property

Synopsis: A county sheriff has the authority to dispose of unclaimed personal property of former inmates.

In disposing of such property, the sheriff, as a bailee for such property, should follow the procedure set forth by the provisions of K.S.A. 58-208 through K.S.A. 58-215.

* * *

Dear Sheriff Chaffee:

As Sheriff of Shawnee County, you request an opinion regarding the disposal of unclaimed personal property belonging to former inmates.

Specifically, you ask the following questions:

- (1) Does a county sheriff have authority to dispose of unclaimed inmate property?
- (2) Does K.S.A. 58-208 through 58-215 control the disposal procedure, or may the sheriff do so solely by departmental regulations?

The disposal of unclaimed property of inmates incarcerated in a "correctional institution," as defined by K.S.A. 75-5202, is governed by K.S.A. 75-5257 which provides as follows:

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"It shall be the duty of the director of each correctional institution to take charge of any money or property which any inmate may have with him or her at the time of entering the correctional institution; if property, the director may sell or preserve the same as desired by the inmate. Such money, or the proceeds of the sale of any such property, if the same shall amount to at least twenty-five dollars (\$25), may be placed at interest in a federally insured financial institution by the director for the benefit of such inmate or his or her representatives. Such director shall keep an account of all such money or property, and shall pay the amount of proceeds thereof, or return the same to the inmate when discharged, or to his or her legal representatives in case of his or her death; and in case of the death of such inmate without being released, if no legal representative shall demand such money or property within one (1) year, then the same shall be applied to the revolving fund established by the secretary pursuant to K.S.A. 75-5211."

This particular statute, however, does not apply to county and municipal jails. Further, we were unable to find any statute directly relating to the problem of disposing of unclaimed property of county inmates.

As stated by Mr. Zima in his memorandum to Sergeant Butts, a person who temporarily holds property knowing that it belongs to another party has a fiduciary duty to care for the property until such time that the other party reclaims it. This principle is referred to as a bailment. The "sale" or disposal of personal property held by a bailee is controlled by the provisions of K.S.A. 58-208 through 58-215.

These statutes provide that a bailee having a lien upon goods which have been in his possession for six months or more may proceed to sell such goods, provided that any such sale must be by public auction with the proper public notice of said sale being made. Proceeds from such a sale are distributed according to the provisions of K.S.A. 58-213.

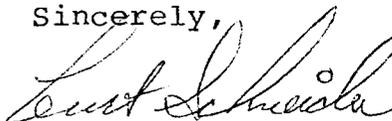
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Applying the above statutes to the questions at hand, the sheriff and/or his appointed agent is the bailee and has a fiduciary duty to care for the personal property of an inmate. Once the inmate is released from custody or transferred, etc., any of the inmate's personal property must be held by the sheriff for a period of six (6) months or more before the above mentioned statutes may be implemented.

In answer to the questions raised, we are of the opinion that the sheriff, as bailee, has the authority to dispose of unclaimed personal property of former inmates, and should follow the procedure set forth by the provisions of K.S.A. 58-208 through 58-215 in doing so.

This is not to say that the sheriff's department may not set up departmental regulations regarding the problem. However, any such regulations adopted by the department should incorporate the requirements and limitations of K.S.A. 58-208 through 58-215.

Sincerely,



CURT T. SCHNEIDER
Attorney General

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