



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 136

Mr. James R. Fetters
Smith County Attorney
Smith County Courthouse
Smith Center, Kansas 66967

Re: Escheat--District Courts--Unclaimed Moneys

Synopsis: Unclaimed funds held by the clerk of the district court in actions which have been finally determined for more than two years are subject to escheat under K.S.A. 1975 Supp. 58-401 whereas monies held in pending action which have not been finally determined but in which no action has been taken are subject to escheat under K.S.A. 1975 Supp. 58-405.

* * *

Dear Mr. Fetters:

You inquire concerning the disposition of unclaimed funds which are being held by the Clerk of the Smith County District Court. They include unclaimed witness fees, and awards to defendants who have never claimed them and whose whereabouts are unknown.

As you point out, K.S.A. 1975 Supp. 58-401 and -405 appear substantially equally applicable. The former statute commences thus:

"Whenever there shall be any money, or interest thereon, or other personal property, or earnings thereon, held in custody in a court of record in an action, for a period of not less than two years after final determination of the action, excepting an action begun in a probate court, and

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an action to construe, enforce or prevent the enforcement of a will, and an action in partition, and it shall be made to appear to the court that such property has not been distributed to the persons entitled to receive the same, after diligent effort therefor, the court shall order the publication of a notice to all persons who claim to be entitled to receive such property"

The section goes on to provide that of the total property escheated in any one action, not to exceed one hundred dollars shall be paid to the county treasurer of the county in which the action is pending, and the remainder shall be paid to the state treasurer, for the general revenue fund of the state.

This section was last amended in 1965, effective January 1, 1966. K.S.A. 1975 Supp. 58-405, last amended in 1968, commences thus:

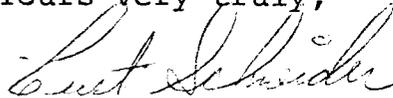
"That in all counties in this state, the clerks of all district courts and the clerks of all city courts and all county treasurers shall, within one (1) year after the taking effect of this act, and annually thereafter between July first and August first of each year list all sums of money in their hands due to witnesses, and all other persons in all cases and matters where no action has been taken during the past five (5) years and file a copy of said report with the board of county commissioners of said county."

K.S.A. 1975 Supp. 58-401 provides a protective procedure for the protection of the rights of persons who have claims to property escheated under that section. The latter statute has no such safeguards. The former statute requires that a diligent effort be made to locate persons entitled to the money or other property held by the clerk of the court. The latter statute requires no effort whatsoever, and purports to authorize publication without any effort to notify possible claimants prior to publication. K.S.A. 58-401, referred to herein as the former statute, applies to moneys or other personal property held "for a period of not less than two years after final determination of the action . . . and [when] it shall be made to appear to the court that such property has not been distributed

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to the persons entitled to receive the same, after diligent effort therefor. . . ." The latter statute applies to "all sums of money . . . due to witnesses, and all other persons in all cases and matters where no action has been taken during the past five (5) years" This language suggests, at least inferentially, that the action has not been finally determined, but remains pending with no action having been taken therein, whereas the former statute applies where the actions have been finally determined for a period of not less than two years. A rationale for this difference is not immediately apparent, although the differing language of the two acts compels the conclusion, absent any other guidance, that K.S.A. 1975 Supp. 58-401 applies to monies being held in actions which have finally been determined for more than two years, and that the latter statute applies to monies being held in pending actions in which no action has been taken for a period of five years or more. I suggest that the Clerk of the Smith County District Court proceed accordingly, to dispose of money or other personal property held in any action which has been determined for a period of not less than two years, pursuant to K.S.A. 1975 Supp. 58-401.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj