



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 31, 1977

ATTORNEY GENERAL OPINION NO. 77- 185

Benjamin J. Neill
General Counsel
Department of Revenue
State Office Building
Topeka, Kansas 66625

RE: Escheats - Unclaimed Refund of Sales Tax
Bonds - Need of Uniform Disposition of Un-
claimed Property Act

SYNOPSIS: There is currently no statutory procedure whereby sales tax cash bonds, which are refundable because all taxes have been paid and every effort has failed to locate the taxpayer to make such refund, may escheat to the State of Kansas. There appears a need for a general law whereby intangible personal property, being held for the owner by any public corporation, public authority, or public officer of this state, or a political subdivision or agency thereof, which has remained unclaimed by the owner for more than a certain number of years after it became payable or distributable, is presumed abandoned, and provision made for its disposal.

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Dear Mr. Neill:

You present a situation in the Administrative Services, Accounting Control Division of the Department of Revenue wherein 407 sales tax cash bonds totaling \$15,900.00 are being held indefinitely because the owner cannot be located in order to make a refund. Some of these bonds date back to 1939.

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You detail the efforts made by the department through mailings to the last known address of the taxpayer and that those bonds remaining unrefunded, even after field representative checks, because there is not any known address, business or resident, of the taxpayer. You explain the problems of the Data Processing Services of the Accounting Control Section in continuously updating such individual's cash bond account.

You ask for a procedure whereby such unclaimed cash bonds can escheat to the State of Kansas. We find no available Kansas statute.

Our search of Kansas statutes does disclose an "escheat" procedure whereby undistributed money and personal property in Kansas court actions can be handled. K.S.A. 58-401 et seq. There is another complete procedure for the handling of the estate of an intestate decedent without heirs. K.S.A. 59-514; 59-901 et seq. But these procedures are no solution to your problem.

More relevant is that law which provides that, if a person cannot be found or refuses to accept money from an estate when the same is tendered, it shall be paid to the County Treasurer to be held ten years, and, if unclaimed then, the County Treasurer shall certify the money to the director of accounts and reports and the state treasurer for disposition as provided "for moneys received from forfeitures". K.S.A. 59-1508; K.S.A. 1976 Supp. 20-2801. But, again, this is a special statute pertaining only to distribution of estates and would not be available in your situation.

"Escheat", in the feudal system sense from which whence it came, is an incident or attribute of sovereignty, and rests upon the principle of ultimate ownership by the state of all property within its jurisdiction. It differs from a "forfeiture" which is a law imposed by a state on the principle of public policy. 30A C.J.S. 916, ESCHEAT, Section 1.

Kansas has precedent for the "forfeiture" approach by the state to abandoned and unclaimed property. In State ex rel. v. Moore, 137 Kan. 396, 398, 20 P.2d 518 (1933) our Supreme Court held R.S. 33-932 (which was the source of prior law to K.S.A. 59-1508) to be a valid law.

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A state may use its legislative power, without formal escheat, to take and dispose of property within its reach which is unclaimed or abandoned, or as to which the owner is unknown. The basis of the state's power to take abandoned personal property is the principle that, when property has ceased to have an owner, it should be held for the benefit of the community. 30A C.J.S. 924, ESCHEAT Section 3(b). UNCLAIMED AND ABANDONED PROPERTY.

Recently, the Oregon Supreme Court upheld a section of a Uniform Disposition of Unclaimed Property Act, which provides:

"98.336 Property held by state courts and public officers and agencies. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned. (1957 c.670 s.10)" State ex rel. Mallicoat v. Coe, 254 Or. 365, 460 P.2d 357 (1969).

In this case a school district bond was issued on December 1, 1935, and bore a maturity date of December 1, 1946. The UDUP Act was adopted in Oregon as Chapter 670, section 37 of the session laws of 1957. The Oregon Court held this Act was not an escheat statute. Further, of interest to you, the court made the statute "retroactive" so as to cover obligations existing prior to the law and enforced failure to make payment demand on those obligations prior to the existence of that law. Other authorities supporting the retroactive effect of such a statute can be found in 30A C.J.S. 925, ESCHEAT Note 75.75.

There being no present statutory procedure available, we would suggest that the Department of Revenue present its situation to the 1978 session of the Kansas Legislature and request that consideration be given to the enactment of a statute similar to that in Oregon, and that there be provided a disposal procedure along the lines presently contained in K.S.A. 59-1508 and K.S.A. 1976 Supp. 20-2801, for forfeitures.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw