



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

March 25, 1980

ATTORNEY GENERAL OPINION NO. 80- 74

Mr. Thomas W. Stockwell
Merriam City Attorney
Suite 302
United Kansas Bank and Trust Building
Highway 50 at Antioch
Merriam, Kansas 66202

Re: Cities, Second Class -- Pension Funds for Police and
Fire Departments -- Use of Proceeds from Sale of
Unclaimed Property

Synopsis: A city of the second class may sell at public auction
unclaimed or confiscated personal property which has been
in the custody of the police department for a period of
six months. The proceeds from such sale shall be distributed
in equal shares to the police and firemen's pension funds.
Statutes construed: K.S.A. 1979 Supp. 14-10a02, 22-2512,
21-4206, 65-4101 et seq.

*

*

*

Dear Mr. Stockwell:

You have inquired whether a private citizen, who has discovered an
item of personal property, which you describe as a Mo-Ped motorbike,
upon such person's land, and delivered the property to the Merriam,
Kansas Police Department, may assert a valid claim to the property
after it remains unclaimed in police custody for six months. We are
under the assumption that all reasonable efforts to identify and locate
the true owner have been to no avail.

Mr. Thomas W. Stockwell
Page Two
March 25, 1980

It is to be noted that the legislature has imparted to certain qualified municipalities the authority to utilize receipts from the sale of unclaimed property to finance pension funds of certain public employees. This authorization is found in K.S.A. 1979 Supp. 14-10a02, which provides in pertinent part:

"For the purpose of creating, maintaining and funding such pension funds, the governing body of each such city of the second class is hereby authorized and shall:

. . . .

"(c) place into said funds the proceeds of all lost or stolen securities, money or personal property which shall remain unclaimed in possession of any department of the city for six months, together with the proceeds of all unclaimed or confiscated property of any nature which shall have been in custody of the police department for a period of six months, and the city is hereby authorized to sell at public auction such property and place the proceeds into said pension funds in equal shares. . . ."

The determination that a city may sell at public auction personal property such as you describe is in harmony with Attorney General Opinion No. 76-88 issued March 15, 1976, a copy of which we enclose for your information.

The Kansas Supreme Court has recognized an affirmative duty of law enforcement officers to secure property that appears to have been abandoned and to convert such property that remains unclaimed into cash receipts, thereafter forwarding these proceeds to a designated governmental entity. In State v. Coburn, 220 Kan. 750 (1976), the court declares in relevant part:

"Compare K.S.A. 13-14a02 and 14-10a02, dealing with the disposition of unclaimed property in the hands of certain police departments. And cf., Noble v. City of Palo Alto, 89 Cal. App. 47, 264 Pac. 529, holding that even in the absence of a statute or ordinance police officers have a duty to preserve property they find abandoned and to remit to the public treasury the proceeds from the sale of such property; Majewski v. Farley, 203 App. Div. 77, 196 N.Y.S. 508, imposing the same duty under a city charter, even as to property found in the city streets by a policeman who was off duty and not in uniform." Id. at 757.

The capacity of the State to enable a city to hold and to convert unclaimed property into funds for public purposes is reinforced in

Mr. Thomas W. Stockwell
Page Three
March 25, 1980

1 Am.Jur.2d, Abandoned, Lost, And Unclaimed Property, §6, which provides in applicable part:

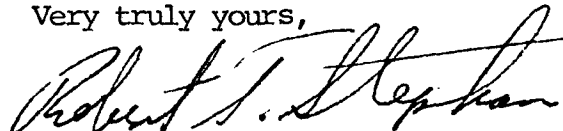
"The well-settled principle that escheat and forfeiture are not favored by the law, and that any doubt as to whether property is subject to escheat is resolved against the state, is expressive of an attitude toward an unknown owner, and not as to the obligor or debtor stakeholder, for the right of the state is superior to that of the person who has custody of the property but no moral or legal claim to its retention.

"The holder of abandoned or unclaimed property may attack the validity of a statute providing for escheat to or custody by the state only in so far as his rights are adversely affected by the statute. If he is relieved of all liability to the owner when he surrenders the property to the state he has no standing to attack the statute. The result is otherwise if surrender to the State will not discharge him from liability." (Emphasis supplied.) [Footnotes omitted.]

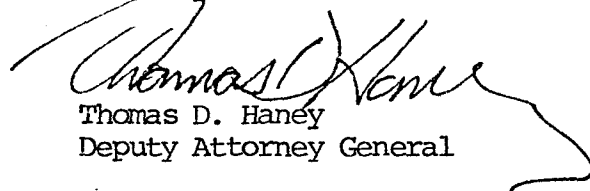
In light of the above discussion, it thus appears that the city has a right of superior possession over that of the finder of unclaimed property which is in the custody of a police department.

In conclusion, it is our opinion that after the police department of a city of the second class has obtained custody of the type of personal property which you describe which remains unclaimed for six months, K.S.A. 1979 Supp. 14-10a02 requires the city to sell such property at public auction and to deposit the proceeds into prescribed pension funds. This procedure would not, however, apply to property which may be described as contraband or of a type the transfer of which would be restricted by specific statute, such as, for example, unlawful weapons, gambling devices, dangerous drugs or intoxicating liquors. See e.g., K.S.A. 1979 Supp. 21-4206 and 22-2512 and K.S.A. 1979 Supp. 65-4101 et seq. It is significant to note that K.S.A. 1979 Supp. 14-10a02 does not become operable until a police department has obtained actual custody of the unclaimed property.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Thomas D. Haney
Deputy Attorney General