

ESCHEATS: Foreign administrator not entitled to Escheat Fund.

June 30, 1934.

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Hon. Chas. Farrington
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Farrington:

This is to acknowledge your letter
of June 23rd as follows:

"In regard to the above-mentioned matter, I wish to procure an opinion and advice from you as to what our conduct in it shall be due to the fact that the State of Missouri and your office is more vitally interested in it than ours.

"In 1918 or 1919, an estate was probated in our Probate Court and it consisted in the proceeds of some war risk insurance. Marve Gann was a distributee of that insurance and entitled to about \$1,000.00 of the estate. It seems that Marve Gann had lived in Arkansas, but shortly after the 1918 or 1919, he went away leaving his wife and family and went to north Oklahoma, where he lived a life of a hermit and finally disappeared. In due course, the estate was ended up and due to the fact that the whereabouts of Marve Gann was unknown, he could not be reached, this fund escheated to the State of Missouri, and was so paid by our Probate Court to the Secretary of the Treasury. Marve Gann has been unheard of and only upon rumor alone is it believed that he con-

tracted pneumonia or some other fever in this mountain home of his and died. There has been no one produced that has actual personal knowledge of his death.

"Now, a couple of Oklahoma lawyers have come in representing the heirs and next of kin of Marve Gann, and request that the money be paid over to them. Our statutes, as you probably know, on escheats provides that any time within twenty-one years, a distributee, whose part has escheated or his personal representative, may come in and by petition, petition the Probate Court, where this escheat took place, and upon satisfactory proof, the Probate Court issues an order to that effect, which order is of the effect of a warrant and which the State Treasurer or Auditor must honor and pay out. So it is most essential that the proper procedure be had in the Probate Court here because it seems from the statutes that the duty is of the State with an opinion to pay out is mandatory. It is the duty of the Prosecuting Attorney in any county where such a proceeding is filed to represent the State, and file an answer.

"Now, what has happened is that the two lawyers have come to the County wherein Marve Gann is supposed to have died, and had letters of administration issued in Oklahoma appointing one W. C. Duke as administrator there. He has posted bond, as we understand it, with the Probate Court there. Now, he comes into Missouri and files a petition setting up those facts and asking for an order of the Court for the money which is escheated to the State. We have asked for time in order to fully investigate the law and get advice from your office in the matter, and it comes up on the 9th day of June, 1934, and our two legal queries, which appear to the writer, is (1) whether or not an administrator appointed in Oklahoma would have any capacity to bring a lawsuit in the Probate Court of Greene County. I believe that the answer to the same would be negative; the administrator being an officer generally only of the State of appointment, and

would have no representative capacity in Greene County. The writer feels certain that this is the rule as to suits brought by an administrator, but there may be a difference in this case as it is not strictly a lawsuit. And (2) if you are in agreement with our office upon this latter conclusion, do you not think it would be necessary that an Ancillary Administrator be appointed here to bring this procedure, and to make a bond to the Probate Court of Greene County, which would protect the County in case Marve Gann should later appear and demand his share?

"Please let us have your advice in the matter as soon as possible and any directions that you may have, for we feel that since your interest is far greater than ours that any steps should be by and with your consent."

We agree to the conclusion reached by you in this matter as stated by the facts contained in your letter. Chapter 3 and Amendments, R. S. 1929, relates to escheats. Section 623 of said chapter provides:

"Within twenty-one years after any money has been paid into the state treasury by an executor or administrator, assignee, sheriff or receiver, any person who appears and claims the same may file his petition in the court in which the final settlement of the executor or administrator, assignee, sheriff or receiver was had, stating the nature of his claim and praying that such money be paid to him, a copy of which petition shall be served upon the prosecuting attorney, who shall file an answer to the same."

Section 624 of the same chapter provides:

"The court shall examine the said claim, and the allegations and proofs, and if it find that such person is entitled to any money so paid into the state treasury it shall order the state auditor to issue his warrant on the state treasurer for the amount of said claim, but with-

out interest or costs; a copy of which order, under seal of the court, shall be a sufficient voucher for issuing such warrant."

From the above it will be noted that the Court, in order for the State Auditor to issue his warrants on the State Treasurer, must ascertain two facts from the claim presented: (1) that the person is dead; (2) that the heirs or persons applying for the fund are rightfully entitled to same.

Section 624 places the burden upon the Court to examine the claim and the allegations and proofs. Section 623 provides that the person must file a petition in the court and must state the nature of his claim.

Your letter states that one W. C. Duke was appointed an administrator in Oklahoma and was petitioning the Probate Court in Missouri for this fund. In other words, the petition filed in this case is brought in the name of an officer of the State of Oklahoma, and the question arises as to whether a foreign administrator has any title or right to the money? Our answer is in the negative.

In Hartnett v. Langan, 232 S.W. 403 (Mo.Sup.) 1.c. 409, the Court said:

"V. Nor were the plaintiffs entitled to any allowance for attorney's fees or expenses for bringing and prosecuting this suit. It is true the plaintiffs were obliged to bring the suit in order to secure a valid release of their property from the lien of the deed of trust. A foreign administrator has no title to nor right to collect or receipt for a note from citizens of this state and secured upon property in this state. Crohn v. Bank, 137 Mo. App. 712, 118 S.W. 498; Richardson v. Busch, 198 Mo. 187, 95 S. W. 894, 115 Am. St. Rep. 473; Naylor v. Moffatt, 29 Mo. 126; McCarty v. Hall, 13 Mo. 480; Bartlett v. Hyde, 3 Mo. 490; State ex rel. v. Bunce, 187 Mo. App. 614, 615, 173 S. W. 101.

"Schlafly, not deriving his powers as trustee from the will of Tighe, the testator, which made no provision for any such trustee, but simply from the order of the circuit court of Clinton County, Ill., had no more title or power to collect and receipt for the balance due on the note and deed of trust in question than would a foreign administrator. The power of both is derived wholly from the laws of the state where they are appointed, and those laws do not operate beyond the limits of such state. Curtis v. Smith, 6 Blatchf, 537, Fed. Cas. No. 3,505; Scudder v. Ames, 89 Mo. loc.cit. 522, 14 S. W. 525; McPike v. McPike, 111 Mo. loc. cit. 225, 226, 20 S.W. 12; and other authorities supra. *****"

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH/afj