

ESCHEAT FUND - Duty of State Auditor to make payment to
representative of an estate. Sections 623 and
624 R. S. Mo. 1929.

February 18, 1933.

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Hon. Orin J. Adams
Prosecuting Attorney
Caldwell County
Kingston, Missouri

Dear Mr. Adams:

Your letter of January 25, 1933, addressed to the Attorney-General, attention of W. C. Buford, Assistant Attorney-General, together with a certified copy of a decree of the Circuit Court of Caldwell County, entered on the 28th day of January, 1933, and rendered at the November Term, 1932, "In the Matter of the Escheat of Martin Kanan, Deceased", has been referred to the undersigned for attention.

The certified copy of the decree contains the following recitals:

"Now on this day comes Sarah Kenney, Administratrix of the estate of Martin Kanan deceased, and presents her petition duly verified by her affidavit, setting forth and alleging that on the 18th day of June 1914, the same being the fourth day of the June Term 1914 of this court, there was ordered to be paid to the State Treasurer of Missouri, to the credit of the Escheat Fund, the sum of Seven Hundred Three and 9/100 dollars (\$703.09), being the amount due Martin Kanan as his distributive share of real estate sold in partition by H. K. Feltis, Sheriff of Caldwell County Missouri, in the cause wherein Madge E. Kanan, Maurice P. Kanan, Orin H. Kanan, Infants, by their Guardian and Curator, were plaintiffs, against Sarah Kenney, Joanna Laws, Daniel Kanan, Edward Kanan, Ellen Lawler, William Kanan, Martin Kanan and Rose Shelize were defendants, said order being of record in Book 2 at Page 166, of the records of this court.

And it appearing to the court that a copy of said petition was duly served upon O. J. Adams, Prosecuting Attorney of Caldwell County Missouri, and that the said O. J. Adams, Prosecuting Attorney did, on the sixth day of July, 1931, make and file an answer herein, in accordance with the provisions of Section 637, Revised Statutes, 1929, and that in said answer the said Prosecuting Attorney admitted the facts set forth in said petition to be true; and the court having seen and heard the evidence finds that the allegations of the petition are true, and that Sarah Kenney is the duly appointed, qualified and acting administratrix of the estate of Martin Kanan deceased, and is entitled to the said sum of Seven Hundred Three and 9/100 dollars (\$703.09), it is therefore ordered, adjudged and decreed that the State Auditor of Missouri be, and he hereby is directed to issue his warrant on the State Treasurer of Missouri, for the payment of said money, to the said Sarah Kenney, Administratrix of the estate of the said Martin Kanan, deceased."

You ask for an opinion from this department as to whether the decree meets the requirement of Sections 623 and 624, R. S. No. 1929. In the event that such decree and order of the court does meet the requirement of these sections and is properly certified to the State Auditor, then, you request an opinion as to whether such order is a sufficient voucher to the State Auditor, entitling and authorizing him to issue a warrant on the State Treasurer in favor of Sarah Kenney, as Administratrix of the estate of Martin Kanan, deceased, for the escheat fund in the state treasury and as described in the decree.

Section 623, R. S. No. 1929, 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, R. S. Mo. 1929, 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 without interest or costs; a copy of which order, under seal of the court, shall be a sufficient voucher for issuing such warrant."

It will be noted that Section 623, R. S. Mo. 1929, provides that, "any person who appears and claims the same may file his petition". The estate of Martin Kanan, deceased, being in the process of administration, it was the duty of the administratrix to collect in the assets of the estate. She was not only permitted under Section 623, R. S. Mo. 1929, to file the petition within the time required by law, but this fund being an asset of the estate, it was the duty of the administratrix under Section 57 and 94, R. S. Mo. 1929, to collect in the fund for the benefit of the estate.

The applicant for letters of administration at the time of application is required under Section 15, R. S. Mo. 1929, to make an affidavit stating the names of the heirs of deceased so far as known to such applicant.

Sections 238 and 239, R. S. Mo. 1929, provide for the probate court to order distribution of the money or personal property of the estate according to the rights of those entitled to distribution of the estate.

Hon. Crin J. Adams #4

It is the opinion of this department that when the state auditor shall have issued his warrant to the person found by the circuit court to be entitled to said escheat fund, he will have properly discharged his duty under the facts of this case, and under the above quoted sections of the statute. Representing the estate of Martin Kanan, deceased, as Administratrix, it becomes the duty of said administratrix under the order of the probate court to make distribution of the funds. A failure upon her part to discharge her duty in this respect would render she and her bond liable for such failure to the heirs.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CCA:EG