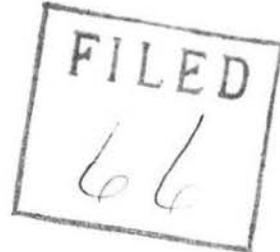


ESCHEAT REFUNDS FROM STATE TREASURER: Order must be directed to State Auditor and not State Treasurer.

1-31
January 25, 1934.

Hon. Richard R. Nacy,
State Treasurer,
Jefferson City, Missouri.



Dear Sir:

This department is in receipt of your request for an opinion as follows:

"Enclosed find the petition for judgment for refund from the Escheats Fund. Will you be kind enough to advise whether under this petition and court order the Treasurer will be required to refund this amount?"

I.

Court shall order State Auditor to issue warrant on State Treasurer in order to recover money paid into State Treasury under Chapter 3, R. S. Mo. 1929.

Section 623, R.S. Mo. 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."

In the case here before us, the order of the Circuit Court of Webster County, Missouri provides in part as follows:

"It is therefore ordered and adjudged by the Court that the said Fred R. Cantrell, administrator of the estate of the said John H. Cantrell, deceased, have and recover from and against the said Escheats Fund, in the hands of the State Treasurer of the said State of Missouri, the said sum of Five Hundred and Forty-four Dollars and Seventy-six Cents (\$544.76); and the said, the Treasurer of the State of Missouri, is hereby ordered to turn over and pay the said Fred R. Cantrell, Administrator aforesaid, the said above sum."

It will be noticed that the order of the court is directed to the State Treasurer and not to the State Auditor, as required by Sec. 624, R.S. Mo. 1929, supra. The recovery of this money from the State Treasury is allowable only because the statutes of this state allow such recovery, and the statutes must be literally followed.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the order of the Circuit Court is not sufficient to require you as State Treasurer to refund this amount.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.