

ESCHEAT when proceedings may be instituted to escheat property to the State of Missouri.

February 12, 1938

Mr. Donald B. Dawson,
Attorney at Law,
Noe Building,
Butler, Missouri



Dear Sir:

This department is in receipt of your letter requesting an opinion as to the following:

"I have your letter of December 9th in answer to my letter to Forrest Smith requesting information in regard to the procedure to follow where real estate is escheated to the State.

You called my attention to Chapter three, and particularly Section 625 of the Revised Statutes of 1929.

I am, of course, very familiar with that Chapter and the Section you mentioned. However, the way I read section 625 it would seem to infer that I would have no power to bring proceedings to have this land escheated until after five years after the death of the person last seized. Perhaps I am misreading the Section but since I am unable to find any cases under this Section I would not want to proceed until I knew just what the ruling would be on that matter. That part of the Chapter three dealing with depositions of unclaimed money is very clear, but as to the Section 625 I could not decide in my mind just when I would have the authority to file an information and claim the land as escheated to the State.

If you would be kind enough to set me straight on this matter I would be very glad to proceed at once to establish the right of the State of this land."

Section 131, R. S. Mo. 1929 provides:

"Sec. 131. Administrator or executor may take charge, when. Whenever letters of administration or testamentary shall have been granted on an estate, and it shall appear to the court or judge in vacation, that the decedent died

possessed of real estate in the state, and his heirs or legatees have failed to take charge of same, or the identity or whereabouts of such heirs or legatees are unknown, then the court or judge in vacation may on its or his own motion, or that of any party interested, direct the administrator or executor in charge of said estate, to take charge and manage the real estate, until such times as such heirs or legatees shall appear and petition the court to turn over to them, or until the same shall escheat to the state as is provided by the "escheat act". (R. S. 1919, Section 130.) "

Section 625 R. S. Mo. 1929 provides:

"Sec. 625. When lands escheat. When the prosecuting attorney shall be informed, or have reason to believe, that any real estate within his county has escheated to the state, and such estate shall not have been sold according to law, within five years after the death of the person last seized, for the payment of the debts of the deceased, he shall file an information in behalf of the state in the circuit court of the count in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre-tenants and persons claiming the same, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated and alleging that, by reason thereof, the state of Missouri hath right to such estate. (R. S. 1919, Section 5314)."

It is apparent that, under the facts as here submitted, until such time as the state shall act to escheat the property in question to the state, the Court should direct the administrator to take charge of and manage the property. However, we do not consider it necessary for the prosecuting attorney to remain quiescent for five years before instituting proceedings under Section 625 supra. The only possible reason for the five year period is to permit the property to be sold for the debts of the deceased. In the instant case, there are no debts unpaid. The reason for the rule having no application here, the rule itself has no application and is of no binding effect.

We are, therefore, of the opinion that, under the facts here submitted, you may proceed, after the final settlement of the estate, under Section 625 R. S. Mo. 1929 to escheat said property to the State of Missouri.

Respectfully submitted.

(Acting) Attorney General

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