

- PROSECUTING ATTORNEYS: (1) Duties of prosecuting attorneys relative to the escheat statutes;
- (2) Officers not allowed additional compensation for the performance of official duties.

January 21, 1943.

V-27
FILED

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Honorable Robert I. Meagher
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Meagher:

The Attorney-General wishes to acknowledge receipt of your letter of January 14, 1943, in which you request an opinion from this Department. Your letter, omitting caption and signature, is as follows:

"Mary Fisher, a resident of this County, died more than a year ago, siezed of real estate which has been appraised at \$2500.00; administration has been had upon her estate and all debts paid, final settlement made and the balance of the personal property has been paid into the Escheat Fund of the State of Missouri, as provided for in Section 621 of the 1939 Revised Statutes of Missouri.

"Mrs. Fisher's only heir is Valburga Zaplletal, a sister who is not a citizen of the United States and who resides in Czechoslovakia.

"Please let me have an opinion from your department as whether this is a proper case under Article One of Chapter Three of the 1939 Revised Statutes of the State of Missouri for the prosecuting attorney to file an information and carry out the requirements of Section 620 to 642, inclusive,

1939 Revised Statutes of Missouri,
for said property to be sold and money
paid into the Escheat Fund.

"Also, let me have an opinion as to
Section 640 which provides as to whether
the compensation allowed to the Prosec-
cuting Attorney by the Court could be
retained by the Prosecuting Attorney or
must said compensation be paid into the
County Treasury as fees in criminal
cases."

Your request seems to be in two sections, the first
question being as to whether under the circumstances and facts
set out in your letter, you should file an information on
behalf of the State in the Circuit Court of your county asking
that the lands be escheated to the State of Missouri. Your
second question is as to whether or not under Section 640,
R. S. Mo. 1939, the prosecuting attorney is entitled to the
compensation called for in such section or whether it should
be paid into the county treasury of Madison County.

I.

In answer to question number one, this writer assumes
that the only question involved relates to the disposal of the
real estate which was a part of the estate of the person named
in your request, since your letter states that the personal
property has been paid into the escheat fund of the State of
Missouri.

Section 620, R. S. Mo. 1939, provides as follows:

"If any person die intestate, seized
of any real or personal property,
leaving no heirs or representatives
capable of inheriting the same; or,
if upon final settlement of an executor
or administrator, there is a balance
in his hands belonging to some legatee

or distributee who is a non-resident or who is not in a situation to receive the same and give a discharge thereof or who does not appear by himself or agent to claim and receive the same; or, if upon final settlement of an assignee for the benefit of creditors, there shall remain in his possession any unclaimed dividends; or, if upon final report of any sheriff to the court, it is shown that the interests in the proceeds of the sale of land in partition of certain parties, who are absent from the state, who are non-residents, who are not known or named in the proceedings, or who, from any cause, are not in a situation to receive the same, are in his hands unpaid and unclaimed; or, if, upon final settlement of the receiver of any company or corporation which has been doing business in this state, there is money in his hands unpaid and unclaimed, in each and every such instance such real and personal estate shall escheat and vest in the state, subject to and in accordance with the provisions of this chapter."

It appears from the section above quoted that if the only heir to the decedent's estate is not a citizen of the United States and is not "in a situation to receive" the property which he would be entitled to under the statutes of Missouri, then the property of the decedent, both real and personal, shall escheat and vest in the State of Missouri.

Section 625, R. S. Mo., 1939, provides as follows:

"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 county 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."

The section just set out above sets out the duties of the prosecuting attorney where he is informed or knows of his own knowledge that there is property in his county which, under certain circumstances, cannot be received by the legal heir. From your letter requesting this opinion it appears that the only heir of Mrs. Fisher is a resident of Czechoslovakia and is incapable of receiving the property which she is lawfully entitled to. It further appears from your letter that you, as Prosecuting Attorney of Madison County, had been informed or through your own knowledge are aware of such fact and that there is property in your county which she would be entitled to if she were capable of inheriting it. Section 625, supra, provides that if the prosecuting attorney knows of such condition that he shall then file an information in the circuit court of the county wherein he is an officer and where the property is located, requesting that in view of such circumstances the property should escheat to the State of Missouri.

Therefore, it is the opinion of this Department that under the circumstances and facts as set out in your request, and the provisions of Sections 620 and 625, that it would be your duty as Prosecuting Attorney to file such information as called for in Section 625.

II.

The second question about which you request an opinion is as to whether or not you are entitled to retain

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the compensation allowed the prosecuting attorney in Section 640, R. S. Mo. 1939.

Under and by virtue of Section 12939, R. S. Mo. 1939, the prosecuting attorney of your county is entitled and shall receive a certain specified salary. Thus, the question which you wish answered resolves itself into the question as to whether or not a prosecuting attorney is entitled to extra compensation in addition to that allowed him by law.

In the recent case of Nodaway County v. Kidder, 129 S. W. (2d) 857, 344 Mo. 795, the Supreme Court of Missouri went into this question rather thoroughly and under the law as set out in that case an officer is not entitled to additional compensation where his salary is specifically set out by statute. It is true that if additional duties to those specified by statute are placed upon an officer that he may in certain instances receive additional fees or compensation. However, the duties specified under the escheat statute have reference to matters pertaining to and relating to the official duties of the prosecuting attorney and the services rendered pursuant to such statutes are within the scope of said official duties. As stated in Nodaway County v. Kidder, cited above, public policy requires that a public officer be denied additional compensation for performing official duties.

Therefore, it is the opinion of this Department that the compensation to the prosecuting attorney as specified in Section 640, R. S. Mo. 1939, shall not be retained by the prosecuting attorney but shall be paid into the treasury of Madison County as fees in criminal cases are paid.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG