

ESCHEAT:

State is entitled to possession of escheated property; no provision governing what agency of state has charge of such property.

July 12, 1943



Honorable Forrest Smith, Secretary
Board of Fund Commissioners
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of July 2, 1943, as follows:

"The Board of Fund Commissioners of the State of Missouri respectfully request your legal opinion construing Section 625 to 640 inclusive, Article 1 Chapter 3, R. S. Missouri 1939 relating to the procedure of escheating lands and your opinion upon the following statement of facts and questions of law, to wit:

"Mr. Thos. R. Madden, Administrator of the Estate of Bernhard Nickel, deceased, St. Louis City, Missouri, has notified the Circuit Attorney of the City of St. Louis and the State Auditor of the State of Missouri that said Bernhard Nickel died leaving no heirs or representatives capable of inheriting the personal and real estate belonging to said Bernhard Nickel, deceased, and that upon final settlement of said estate in the probate court of the City of St. Louis, Missouri, cash in the sum of \$519.11 was remitted to Wilson Bell, State Treasurer and has been deposited in the escheat fund of the State of Missouri and that included among the assets of the estate of the said Bernhard Nickel was a piece of real estate situated in the City of St. Louis and

known as 1422-24 So. Cardinal Avenue, which is improved real estate. The real estate in question is subject to a deed of trust to secure a loan of \$1,000 made on August 18, 1938, of which there remains unpaid as of December 31, 1942, the sum of \$689.46. The property in question produces income sufficient to pay monthly installments on the loan, taxes, insurance, maintenance and a small balance monthly which is subject to escheat.

"The Board of Fund Commissioners would appreciate being advised whether or not, under the laws of this state, particularly Chapter 3 relating to escheats, said Board has the authority to manage, control, rent, lease or sell real estate which is entitled to escheat to the State of Missouri?

"Also, whether or not said Board has the right and authority to pay from the income of the property in question or from moneys credited to said estate in the escheat fund, payments on loan, insurance premium, taxes, collection fees, cost of perfecting title to said real estate in the State of Missouri and all incidental expenses relating to the management and control of the property?

"The Board would appreciate being advised as to what the procedure is, in perfecting title to said real estate in the State of Missouri and whether or not said proceedings outlined in Section 625 R. S. Mo. 1939 should be commenced within the period of five years after the death of the person last seized or that said proceedings be commenced and instituted after five years from the date of the death of the deceased and who has title to the property here in question during the period of administration of the estate and who has title to the property after final settlement?

"The Board would appreciate being advised as to what are its duties and authority generally over the Escheat Fund of the State of Missouri under the provisions of Article 1 Chapter 3 and Articles 5 Chapter 87 R. S. Mo. 1939?"

We rendered an opinion on this subject August 11, 1942, to F. M. Brady, Prosecuting Attorney of Benton County, which covers your question as to when the prosecutor may commence the proceedings to determine that land has escheated. We there concluded he might commence the proceeding at any time after the death of the person last seized. We do not read the statutes as prescribing any period within which, or after which, the prosecutor must act. The only limitation there, if it can be so classed, is that if the property be sold before the prosecutor acts and within five years of the death of the person last seized, in order to pay his debts, then the prosecutor may not start action to have the fact of escheat judicially determined. A copy of that opinion is enclosed.

However, in the re-examination of that opinion we have concluded it is partially wrong in that we concluded therein that after a judgment of escheat the sheriff held the property in his possession pending its disposition.

In connection with that question it appears that Section 633, R. S. Mo. 1939, provides:

"When judgment is rendered for, and the title to such real estate described in the information is vested in the state, a writ shall be issued to the sheriff of the same county, commanding him to seize said real estate."

Section 634, R. S. Mo. 1939, speaks of this writ as a "writ of possession." That term is defined in 71 C. J. p. 1629, Section 9 to "designate any writ by virtue of which the sheriff is commanded to place a person in possession of real or personal property." Also, it will be noted that Section 629, R. S. Mo. 1939, in speaking of defaults states that judgment shall be rendered for the state "and it shall be seized and possessed of the lands.

Possession is defined in 49 C. J., p. 1093, Section 2, to mean:

"The act of possessing, actual care, control, and management."

In the following Section 3, "possession of land" is defined as:

"The actual control by physical occupation, the holding of it and the exercise of dominion over it, the immediate exclusive dominion of it, that position or relation which gives to one its use and control, and excludes all others from a like use or control."

Further, in 30 C.J., p. 1183, Section 19b(1) in speaking of "Escheats" it is said:

"When title vests in the state it carries with it the right to possession, and to the rents and profits accruing after the vesting."

It, therefore, seems clear that the law contemplates that upon the judgment of escheat the state is vested with title and possession of the land and the right to the rents and profits accruing thereafter.

The remaining questions deal with what officer or agency of the state is to exercise the "possession" of the property that is vested in the state. Diligent search has failed to reveal a single line of law which says that the Board of Fund Commissioners has any duties to perform in that connection. Examination of the laws applicable to escheats, from their original enactment (R. S. Mo. 1825, pp. 356-361, Secs. 1-9) through every amendment and revision up to date, discloses at no time has the General Assembly ever stated what agency of the state is to exercise control and management over escheated property. The statutes from 1835 to 1865 contained provisions whereby the General Assembly might order escheated property sold at any time, rather after the five year period, which was even then prescribed and that may account for the absence of any authority for an agency of the state to exercise possession of such property, since the General Assembly might have ordered it to be immediately sold.

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Section 641, R. S. Mo. 1939, provides:

"The state auditor shall keep just and accurate account of all money paid into the state treasury and all land vested in the state as aforesaid."

This section might be thought to vest the control of such land in the auditor, but we are unable to find where any such broad meaning has been ascribed to keeping an account.

We, therefore, conclude that neither the Board of Fund Commissioners, nor any other officer or agency of the state, has been given authority by the General Assembly to exercise control and management over real estate that has been determined to have escheated to the state.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney-General