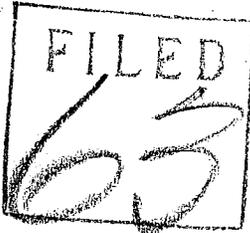


DIVISION OF RESOURCES
AND DEVELOPMENT:
STATE MUSEUM:

Exhibits accepted for display in state museum to be retained or returned to owner in accordance with terms under which exhibit has been placed in state museum.



December 14, 1954

Mr. H. H. Mobley, Director
Missouri Division of Resources
and Development
Jefferson Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"In 1943 the State Museum was transferred to the jurisdiction of the Commission of Resources and Development. The State Museum had in force at that time a loan policy. Miscellaneous material was accepted from people on a loan basis, frequently without analysis as to its value for museum purposes. Such a policy inevitably led to the amassing of large quantities of artifacts, historical items and Missouriiana. Much of it is of questionable value.

"The Missouri Resources and Development Commission abolished the loan policy and today accepts only gifts.

"The last Legislature appropriated a sum of money to permit the Commission to re-appraise its storerooms to get rid of useless material. This question now arises:

"In 1926 a Mrs. Guenther, then residing in Jefferson City, placed some items in the museum on loan. The items are of little commercial value but would perhaps have some sentimental value to the donor. In

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attempting to return this loan we have made every effort to locate Mrs. Guenther but have not been successful. It is my opinion she is dead and so we have also tried to locate a daughter who moved from Jefferson City in the '30s. We have been unsuccessful in locating anyone connected with the family.

"Since the material is of no value to the museum and since this is only one example that we expect to recur numerous times, we would appreciate your advising us as to what liability we might incur if we disposed of this material. Disposition might be by several means. Some material because of its worthlessness probably would be hauled to the dump, anything which had some value but not usable in the State Museum would be made available to city and school museums throughout the state.

"Specifically, we would appreciate an opinion as to whether or not the Division of Resources and Development would incur liability by disposition of such material, after having made every effort to return it to its donor."

At the outset, we will dispose of the question relating to the exhibit received from the lady mentioned in your letter of inquiry. Upon receipt of the letter, and through the cooperative efforts of your department and of this department, a relative of the lady was located and we are now advised that the exhibit placed in the museum by her has been returned.

However, the over-all question remains as to the liability of the Division of Resources and Development, or individual members or employees thereof, arising from the disposition of exhibits whose ownership is unknown or whose owners may not be located.

The lapse of a long period of time between the placing of an exhibit with the state museum and the present, coupled with the failure of the owner thereof to make demand for its return, might be thought to constitute an "abandonment" thereof so that the State of Missouri might thereupon succeed to the title thereto. However, this, we find, will not be the result under

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the conditions outlined, for the reason that under Missouri law such abandonment occurs only when an actual intent to abandon on the part of the owner coincides with the fact of failure to assert possessory rights. This phase of the Missouri law is derived from the Spanish law and has been repeatedly expressed in decisions of the appellate courts of this state. See Equitable Life Assurance Society of U.S. v. Mercantile-Commerce Bank & Trust Co., 155 Fed. 2d 776, Cert. Den. 67 Supreme Court 114, 329 U.S. 760, 91 L. Ed. 655; Clark v. Hammerle, 36 Mo. 620; Gerber v. Appel, 164 S.W. 2d 225, opinion quashed in part State ex rel. Appel v. Hughes, 173 S.W. 2d 45, 351 Mo. 488, and other cases cited therein.

The rule is perhaps most concisely set out in Gerber v. Appel, 164 S.W. 2d 225, from which we quote, l.c. 228:

" * * * 'Abandonment,' in law, is defined to be the relinquishment or surrender of rights or property by one person to another. It includes both the intention to abandon and the external act by which the intention is carried into effect. To constitute an abandonment there must be the concurrence of the intention to abandon and the actual relinquishment of the property, so that it may be appropriated by the next comer. * * *"

You have referred to a "loan policy" having been in force prior to the state museum having been placed under the control of the Commission of Resources and Development. We are advised that such "loan policy" was not carried out through the medium of written agreements, and therefore copies of such agreements are unavailable. In the absence of such agreements, we can but direct your attention to certain general rules applicable to bailments. It is our thought that the placing of an exhibit with the state museum does constitute a bailment. Absent an express agreement to the contrary, bailments are terminable at will. Other factors which may bring about such a termination of the bailment may arise from destruction of the subject matter, by the conduct of the parties, by completion of the purpose of the bailment, or by lapse of time in accordance with the terms of the bailment. The general rule in this regard is found in "Bailments" § C.J.S., p. 321, from which we quote:

"A bailment may be terminated by agreement or conduct of the parties, by destruction of the subject matter, by completion of its

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purpose, or by lapse of time in accordance with its terms. The death of bailor or bailee may terminate a bailment for the sole benefit of either."

Apparently, bailments here under consideration are also terminable by the state museum in its capacity as bailee. Upon such termination occurring, the bailor, who in this instance is the owner, is entitled to possession of the property. However, since in your case the converse of this situation presents the problem, viz., a desire to voluntarily return the bailed property, it becomes necessary to determine what steps must be taken to effectuate the termination of the bailment.

It is fundamental in such cases that notice of such termination be given by the bailee to the bailor. We quote from Truck Leasing Corp. v. Swepe, et al., 248 S.W. 2d 84, l.c. 86:

" * * * We have no fault to find with defendants' statement that a bailment for an indefinite time is terminable at will. * * *"

Inasmuch as the facts stated in your letter of inquiry indicate that such notice cannot be given, we are at a loss to determine how the bailment can be terminated. Of course, the assertion of a claim of unqualified ownership, adverse to the rights of the true owner, would initiate the period of limitations. Upon the expiration of the applicable period, title to the property would then become vested in the State of Missouri, and the subsequent disposal thereof would be governed by the general laws relating to personal property belonging to the state. However, we feel that it is doubtful that the State of Missouri, acting through an administrative agency, would wish to assume such an adversary position with persons who have placed exhibits in the state museum.

In the alternative, it seems that it will be necessary that the exhibits be kept safely stored, exercising reasonable care for their preservation, until such time as the true owner may be located. Until such time has elapsed, it is our thought that any disposal or destruction of the exhibits would constitute a trespass upon the property rights of the true owner thereof.

CONCLUSION

In the premises, we are of the opinion that the bailment of exhibits placed in the state museum may be terminated only in

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accordance with the terms of such bailment and that, in the absence of any agreement for the termination thereof, such bailment may be terminated only by notice to the true owner of such exhibits.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl