

ESCHEATS: When payment may be made out of Escheats Fund.

June 18, 1937.

625.

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Mr. John L. Graves,
Bond Attorney,
Jefferson City, Missouri.

Dear Mr. Graves:

We wish to acknowledge your request for an opinion under date of June 11th, wherein you state as follows:

"This department would appreciate an opinion of your office on the enclosed court order of the Circuit Court of Nodaway County, Missouri, directing the payment of \$238.38 to the order of the Department of Public Welfare of the State of Ohio, which amount being the interest of Jennie Mitchell, deceased, in the above partition suit.

"The enclosed court order sets out the facts and we do not re-state them in this request for your legal opinion."

The court order makes the following recitals:

"Now on this 8th day of June, A. D. 1937 this cause coming on for hearing upon the application of the Department of Public Welfare of the State of Ohio by Mrs. Margaret M. Allman, it's director, and also the answer of Virgil Rathbun, Esquire, Prosecuting Attorney of Nodaway

County, Missouri and it appearing to the Court from evidence duly heard that heretofore, to-wit: on the 19th day of April A. D. 1937, more than ten days before this date, that there was served on the said Prosecuting Attorney of Nodaway County, Missouri a written notice of hearing on the 19th day of April A. D. 1937 and that service thereof was duly acknowledged by the said Prosecuting Attorney; and it also appearing to the Court that there was heretofore tried in this Court a certain proceedings wherein Isaac H. Crain, et al. were plaintiffs and Hattie Zinninger, et al. were defendants which was an action in partition and which was duly proceeded within this Court to a final decree, in which said final decree the Court found that one Jennie Mitchell, an incompetent person, confined in the Dayton State Hospital at Dayton, Ohio, was entitled to an undivided one-third interest in said land and it was by said decree ordered that distribution be made on that basis.

"The Court further finds that the purchase price of said land as sold at said partition sale, was the sum of \$875.00 and that the value of the interest of the said Jennie Mitchell in and to said land was, at the time of the rendering of the decree herein, of the value of \$238.38.

"The Court further finds that heretofore, to-wit: on the 1st day of August, A. D. 1923 the Sheriff of Nodaway County, Missouri paid into the hands of the Treasurer of the State of Missouri, as due the Jennie Mitchell, the sum of \$238.38 which amount is still in the hands of the Treasurer of the State of Missouri to the account of the Escheats Fund in said office of the Treasurer of the State of Missouri.

"THE COURT FURTHER FINDS that the said Jennie Mitchell was committed to the Dayton State Hospital on the 26th day of May, A. D. 1894

and died at said Dayton State Hospital on the 26th day of August, A. D. 1916 seized and possessed of her interest in the land partitioned herein, being the sister of the deceased. That no administration was ever granted on the estate of the said Jennie Mitchell in the State of Ohio, or elsewhere, and that she died intestate, unmarried and without issue.

"That at the time of her death there was due the Department of Public Welfare of the State of Ohio from the said Jennie Mitchell or her estate the sum of \$975.61 for her care, no part of which has been paid. That under the statutes of the State of Ohio administration can still be granted on her estate and the statute of limitations of actions does not run against the State of Ohio and the said claim of the Department of Public Welfare would be allowed if such an estate were opened, but that the said Jennie Mitchell died seized and possessed of no other property other than her interest in the land partitioned herein, the proceeds thereof being in the hands of the State Treasurer of the State of Missouri as above setforth. That the requirements of opening an estate for the said Jennie Mitchell, Deceased, would be unfair to the Department of Public Welfare of the State of Ohio who would be entitled to the entire proceeds thereof. That the costs of administration, considering the amount involved would be prohibitive.

"WHEREFORE, it is by the Court Ordered that the State Auditor of the State of Missouri shall issue his warrant on the State Treasurer of the State of Missouri to be paid out of the Escheats Fund of the State of Missouri for the sum of \$238.38 payable to the order of the Department of Public Welfare of the State of Ohio, the same to be credited to the account of the said Jennie Mitchell, Deceased, and to deliver said warrant to their Attorneys of record or Charles H. Morgan of Newton,

Jasper County, Iowa the authorized representative and agent of the said Department of Public Welfare of the State of Ohio and take his receipt therefor.

"It is further Ordered that a copy of this Order under the seal of the Court, shall be furnished to the State Treasurer of the State of Missouri and also that a copy of this Order, under the seal of the Court, be furnished to the State Auditor of the State of Missouri."

Section 623, R. S. Mo. 1929, provides as follows:

"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."

From the above it will be noted that the court, in order for the State Auditor to issue his warrant on the State Treasurer, must ascertain two facts from the claim presented: (1) that the person is dead, and (2) that the person applying for the fund is rightfully entitled to the same.

In the instant case the court found both facts. The question might be raised whether a State is a "person" within the meaning of the above section. However, in our opinion, there is no doubt that the term as used would include a State.

In the case of *City of Louisville v. Commonwealth*, 62 Ky. 295, 1. c. 296, the Court points out that a general law concerning persons may include artificial as well as natural persons, including each separate State:

"A general law concerning persons may include artificial as well as natural persons; and every corporation is a legal person. Even the United States, and each separate State, and every county in each State, are quasi corporations, and each of all such corporations is, in law, a person."

Section 624, R. S. Mo. 1929, provides as follows:

"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."

The above section places the burden upon the court to examine the claim and the allegations of the claim.

In the instant case the court examined the claim and the allegations supporting it, and found in favor of the Department of Public Welfare of the State of Ohio.

The judgment shows that service was had on the Prosecuting Attorney of Nodaway County and by him acknowledged, and further that upon the cause coming on for hearing he made answer. This case was tried in the court which had previously determined the deceased's interests as a one-third interest in land, which interest brought \$238.38 at a partition sale, and was the amount paid into the hands of the Treasurer of the State of Missouri by the Sheriff of Nodaway County, Missouri.

The court thus having jurisdiction of the parties and of the subject-matter, this judgment can not be attacked collaterally, as stated by the court in the case of Leahy v. Mercantile Trust Co., 296 Mo. 561, 247 S.W. 396, l. c. 404:

"Have we a judgment in the Circuit Court which can be attacked collaterally? Absent jurisdiction of parties to an action, and absent jurisdiction of the subject-matter, apparent upon the face of the record, a judgment may be attacked collaterally, but not otherwise."

And in the case of Mississippi and Fox River Drainage District v. Ruddick, 228 Mo. App. 1143, 64 S. W. (2d) 306, l. c. 308, the court said:

"Where a court has jurisdiction of the subject-matter and of the parties, its judgment, in the absence of fraud in procuring it, imports absolute verity and can not be attacked by evidence outside the record. Strobel v. Clark, 128 Mo. App. 48, 106 S.W. 585. And where a court of general jurisdiction has acquired jurisdiction of a case, any subsequent error or irregularity will not oust it therefrom nor subject a judgment, in the exercise of that jurisdiction, to collateral attack. State v. Wear, 145 Mo. 162, 46 S.W. 1099. Its judgment, however erroneous, is not void so as to be subject to collateral attack. Harter v. Petty, 266 Mo. 296, 181 S. W. 39; Forest Lbr. Co. v. Mining Co. (Mo. Sup.) 222 S. W. 398; Abernathy v. R. Co., 287 Mo. 30, 228 S. W. 486."

Sections 623 and 624, supra, having been complied with, we are of the opinion that payment may be made out of the Escheats Fund to the order of the Department of Public Welfare of the State of Ohio, in the amount of \$238.38, being the amount of the claim found by the court to be due.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.