

STATE MENTAL HOSPITALS:
PERSONAL PROPERTY OF INMATES:
DISPOSITION:

In a situation where a patient leaves a mental hospital on discharge or convalescent leave, and leaves in his personal account at the hospital unclaimed funds, there is no existing means by which any disposition can be made by the hospital of these funds. Further, in a situation where a patient in a state mental hospital dies, or leaves the state mental hospital on convalescent leave or discharge and in either situation leaves at the state mental hospital personal property which is unclaimed, such property may become the property of the state hospital as "abandoned property," in those cases where the fact situation brings the property within the purview of the law holding property to be abandoned.

January 5, 1956



Honorable B. E. Ragland
Director, Division of Mental Diseases
Department of Public Health and Welfare
State Office Building
Jefferson City, Missouri.

Dear Sir:

Your recent request for an official opinion presents two questions, the first of which is:

"What disposition should be made of unclaimed funds in personal accounts of patients who have left a state mental hospital by convalescent leave or discharge?"

We here note that all references to statutes are to RSMo 1949.

We see no way in which anything can be done with such funds as you describe above.

Paragraphs 1 and 2 of Section 202.060 read as follows:

"1. The director of the division of mental diseases in the department of public health and welfare shall immediately use all proper diligence to return to the persons entitled thereto all funds held by the officials of the respective state institutions for mental diseases that shall have been heretofore deposited with said officials by inmates, and relatives and friends of inmates, to be used by such officials for the welfare and benefit of inmates who shall have deceased.

"2. If, after said director of the division of mental diseases has diligently used such methods and means as he shall consider reasonable to refund said funds, there

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shall remain in the hands of any such officials any money, the owner of which being unknown to said director, or if known, said director cannot locate such owner, in each and every such instance said money shall escheat and vest in the state of Missouri, and it shall be the duty of said director and officials to pay the same to the state director of revenue, taking a receipt therefor, who shall deposit the money in the state treasury to be credited to a fund to be designated as 'escheat.'"

It will be noted that the above is applicable only when the former inmate is known to be deceased, which is not the fact in the situation which you present. Such being the situation, we do not, as we said, see any way in which anything can be done with these funds until it is known that the former inmate is deceased.

Your second question is:

"2. What disposition should be made of other unclaimed personal property belonging to patients who have died or left a state mental hospital by convalescent leave or discharge?"

In this situation we believe that in many instances the theory of abandonment would be applicable. The most recent statement (1952) as to what constitutes an abandonment is found in the case of *Linscomb v. Goodyear Tire and Rubber Co.*, 199 F.2d 431. In its opinion in that case the court stated (l.c.435):

"* * * In this case the law of the state of Missouri is applicable. We have recently had occasion to consider the Missouri law on the issue of abandonment. *Equitable Life A.S. v. Mercantile-Commerce Bank & Trust Co.*, 8 Cir., 155 F.2d 776; *Rosenbloom v. New York Life Ins. Co.*, 8 Cir., 163 F.2d 1; *Motlow v. Southern Holding & Securities Corp.*, 8 Cir., 95 F.2d 721. In *Equitable Life A.S. v. Mercantile-Commerce Bank and Trust Co.*, supra [155 F.2d 780], we said that the definition of Missouri courts was to the effect that abandonment 'is a fact made up of an intention to abandon, and the external act by which the intention is carried into effect.' In *Rosenbloom v. New York Life Ins. Co.*, supra [163 F.2d 8], also determined under the laws of Missouri, we among other things said, 'For this court, Judge Johnsen has recently stated the Missouri rule in *Equitable Life Assur. Soc. of United States v. Mercantile-Commerce Bank & Trust Co.*, 155 F. 2d [776] 777, 779-780."

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We also note Section 7 C.J.S., Vol. 1, page 15, which states in part:

"An intention to abandon property, or a right, will not be presumed, at least where the conduct of the owner or holder can be explained consistently with an intention to hold or continue to claim the thing. It has even been said that the presumption is that one having property or a right did not intend to abandon it, but this is probably to be given no more weight than as a statement in different language of the general principle that abandonment will not be presumed; and, on the contrary, it has been held that, if the thing asserted to have been abandoned is shown to have been deemed by its owner, and by the general opinion of the community, valueless and merely a hindrance, the presumption that the owner intended to preserve it, or that he did not intend to abandon it, cannot arise, and that conduct on his part, inconsistent with an intention to continue to claim the property or right, may raise a presumption of abandonment, but these would seem to be inferences drawn from the facts, rather than presumptions, properly so called (Evidence § 115 [22 C.J. p. 83 notes 60-62]).

"So, the burden of proving an abandonment rests on one who asserts or relies on it, and it is incumbent on him to make it affirmatively appear that the property or right has been relinquished by its owner or holder, with the intention of abandoning it, and with no intention of returning to or reclaiming it."

We also call attention to Sections 8 and 9 et seq., which read, respectively:

"The question of abandonment vel non, that is, whether there has been actual relinquishment of property or a right, and an intention to abandon it, is ordinarily a question of fact, to be determined by the jury under all the circumstances of the case, and not a question of law, although it has, somewhat loosely, been said to be a question of mixed law and fact.

"Where, however, there is, and can be, no dispute about the facts, that is to say, where all the essential facts are admitted or indisputably proved, and the inferences to be drawn from them are certain and free from doubt, and establish the fact of abandonment with reasonable certainty, the question may be withdrawn from the jury,

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and abandonment be declared by the court as a matter of law; or, on the other hand, where the evidence is, as a matter of law, insufficient to show abandonment, it seems that the court may likewise determine the question without submitting it to the consideration of the jury."

"An abandonment of property or a right divests the title and ownership of the owner, as fully and completely as would a conveyance, from the time of the act of abandonment, and so, while the term 'loss' has a different connotation from 'abandonment,' and is properly to be distinguished therefrom, an abandonment may be said to amount to the loss, in the more general sense of that word, of the abandoning owner's interest in, or title to, the property or right abandoned, so as to bar him from further claim to it, except as he, like anyone else, may thereafter appropriate it and make it his own if it has not already been appropriated by another. One who has abandoned property does not regain legal possession or ownership of it by mere vague utterances as to its probable future value, and indefinite suggestions as to what he may do with it in time to come.

"Personalty, on being abandoned, ceases to be the property of any person, and thenceforth is no man's property, unless and until it is reduced to possession with intent to acquire title to, or ownership of, it. It may, accordingly, be appropriated by anyone, if it has not been reclaimed by the former owner, and ownership of it vests, by operation of law, in the person first lawfully appropriating it and reducing it to possession with intention to become its owner, provided, as has been said, the taking is fair. One so appropriating abandoned property, or any third person whom he may allow to take it, has a right to the property superior even to that of the former owner, and may hold it against him. In certain instances it has been held, probably as an application of these rules as to abandonment and appropriation, although this is not entirely clear, that personalty abandoned on the land of another became the property of the owner of such land."

Also to subsection (b) of Section 7, C.J.S., Vol.1, page 15, which states:

"The courts have held that, on a question of abandonment, as on one of fraud, a wide range should be allowed as to the evidence, both that tending to prove abandonment and that tending to rebut the allegation. Like any other fact, abandonment may be shown by circumstances, or it may be proved by the acts, conduct, or declarations of the abandoning owner."

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Whether or not personal property belonging to patients who have died or who have left a state hospital by convalescent leave, has become abandoned property depends upon the fact situation in each case, in the light of the statement of the law above as to when property is considered to be legally abandoned.

CONCLUSION

It is the opinion of this department that: In a situation where a patient leaves a mental hospital on discharge or convalescent leave, and leaves in his personal account at the hospital unclaimed funds, there is no existing means by which any disposition can be made by the hospital of these funds.

It is the further opinion of this department that personal property belonging to patients who have died or who have left a state hospital by convalescent leave, leaving such property in the hospital, may become the property of the state hospital as "abandoned property" in those cases where the fact situation brings the property within the purview of the law holding property to be abandoned.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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