

Opinion No. 63-42-L
R-209
March 18, 1963

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: GERALDINE C. SWIFT
Commissioner Estate Tax Department

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. What is unclaimed property?
2. Does the State Examiner have authority to submit lists of unclaimed property deposits, gleaned from his authorized audits of public offices and officers, to the Estate Tax Commissioner to facilitate action to collect proceeds on items of property under applicable statutes?

ANSWERS: 1. See body of opinion.
2. No. The Governor has such authority.

The answer to your first question is provided by the provisions of A.R.S. 44-358 and 44-359:

"All personal property, tangible or intangible, held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned." A.R.S., 44-358.

The full scope of the law, and the things and matters to which it pertains, is evident by the terms of the statute. Any question of the scope thereof is allayed upon the basis of the following statute:

A.R.S. § 44-359. Miscellaneous personal property held for another person

All personal property, tangible or intangible, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

It is the purpose of this statute to gather in all unclaimed or abandoned property. This is fostered by the provisions of A.R.S. §§ 44-351 (Report of Abandoned Property) and 44-374 (Penalties). The last cited section provides as follows:

"§ 44-374. Penalties

"A. Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

"B. Any person who wilfully refuses to pay or deliver abandoned property to the commissioner as required under this chapter shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Added laws 1956, Ch. 126, #1."

The public offices and public officers to which this title of our statutes applies includes, but is not limited to, the following:

Municipal water offices
Municipal quarantine stations
Salt River Valley Project
Roosevelt Conservation Districts
Electrical cooperatives
Irrigation districts
Water, electric and gas companies

It is our opinion that A.R.S. Section 44-359 includes claims for refunds, and certificates of deposit for purchase, or other intangible claims against a department store, as unclaimed or abandoned property.

The second question brings into existence the authority of the State Examiner to publish the results of his audits, particularly as they may itemize unclaimed property, on deposit in the public offices audited. This would include justices of the peace, clerks of the court, state agencies, commissions and boards. Disposition of audits and the information therein contained is provided for in the following statute:

"§ 41-333. Powers and duties; suspension
of county officer by governor

"A. The state examiner shall:

1. Order and enforce a correct and uniform system of bookkeeping by county officers and instruct them in the proper mode of keeping accounts of their offices.

* * * *

4. Personally visit each county seat of the state without prior notice and at irregular intervals at least twice each year, and investigate books, accounts and vouchers of county and precinct officers at least once each year, . . .

5. Report to the attorney general the refusal or neglect of any county officer to obey his instructions.

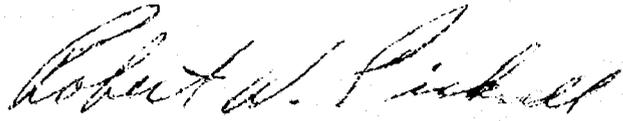
6. Report to the governor the result of his examination as often as required by public interest.

* * * *

"C. The governor may take such action for the public safety as the exigency may demand, and may suspend any county officer from further performance of his duties until an examination is had, or until security is obtained as may be demanded."

It is apparent, from this provision, subject to the authority of the Governor, to determine the public purpose or necessity thereof, the audits or examinations are to be conducted and the results published for the use of the executive departments of the state, including the Estate Tax Commissioner. We see no alternative to this manifest intent of the statutes cited. The authority for the publication of the report, however, rests in the Governor.

We trust this answers your questions.


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The Attorney General