



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 23, 1983

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Sidney B. Brinckerhoff  
Executive Director  
Arizona Historical Society  
949 East Second Street  
Tucson, AZ 85719

Re: I83- 031 (R82-147)

Dear Mr. Brinckerhoff:

We are responding to your opinion request in which you asked several questions relating to the ownership of various artifacts in the custody of the Arizona Historical Society. You specifically are concerned about the State's claim to artifacts the title to which cannot be documented, and artifacts that originally may have been loaned to the State, but the owner of which cannot be found.

With respect to the issue of ownership, the Society is established by legislative act and has only the authority granted by the Legislature. Inasmuch as the Legislature has not provided a specific method for acquiring title to artifacts of unclear ownership, the Uniform Disposition of Unclaimed Property Act, (the Act) A.R.S. § 44-351 et seq., governs the method of acquisition.

A.R.S. § 44-358 creates a statutory presumption that "all personal property . . . held for the owner by any public authority or public officer of this State . . . that has remained unclaimed by the owner for more than seven years is presumed abandoned." Pursuant to this provision, then, all personal property of undocumented or unclear ownership that has been held by the Society for a minimum of seven years, may be deemed to be owned by the State. See Hallas v. Evans, 69 Ariz. 14, 18, 207 P.2d 985 (1949), modified, 69 Ariz. 77, 208 P.2d 1153. A.R.S. § 44-361 requires that a report on the abandoned property be submitted to the Department of Revenue.

Sidney B. Brinckerhoff  
March 23, 1983  
Page 2

Additionally, you asked how such artifacts may be sold. Although the Act provides a statutory method for disposing of abandoned property, the Society has independent authority to sell its property pursuant to A.R.S. § 41-821.B. Thus, after the Society becomes owner of the property pursuant to A.R.S. § 44-358, it may sell the property pursuant to A.R.S. § 41-821.B.<sup>1/</sup> Of course, the Society should not sell property until it has promulgated rules governing the sales.

You also asked whether you, by contract, may provide for state ownership of property that remains unclaimed for seven years. We think you are authorized to establish that condition, pursuant to A.R.S. § 41-821.B.

Finally, you asked whether you may copyright and reproduce for sale materials the state owns. The answer to this question depends upon the nature and history of specific material and thus can be addressed only on a case by case basis. Generally, if no copyright exists, the materials may be appropriate subject matter for copyright; if a copyright exists, you must obtain either permission of the holder of the copyright or ownership of the copyright prior to reproducing the materials. See generally 17 U.S.C. §§ 101 et seq., 201.

Sincerely,



BOB CORBIN  
Attorney General

BC:LPS:kb

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1. We note that the Society acts as a trustee of its property for the benefit of the State. A.R.S. § 41-821.F. Moreover a special fund exists for monies other than appropriations, which must be held for the benefit of the trust. A.R.S. § 41-821.E; Ariz.Atty.Gen.Op. 181-084. To mandate disposition of artifacts under the terms of the Act would violate the trust, inasmuch as the proceeds would be required to go to the general fund. A.R.S. § 44-367.