

ESCHEATS: Section 9.100 of H.B. 445 is ineffective. Court order necessary to obtain money in Escheats Fund.

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December 15, 1947

Honorable B. H. Howard  
Comptroller  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"Section 9.100, House Bill 445, provides for payments totaling \$370.91 chargeable to the Escheats Fund. We will appreciate an opinion as to whether or not these payments can be made without receiving a Court Order."

It is presumed that all of the above monies in the escheat fund have been ordered placed in said fund by court order.

H.B. 445 is an appropriation act. Section 9.100 reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the Escheats Fund, the sum of Three Hundred Seventy Dollars and Ninety-one Cents (\$370.91), for the purpose of paying the following rightful owners the following amounts:  
Mrs. Stella M. Reid, Aurora, Mo.; Due from the Bank of Aurora, Aurora, Mo. . . . . \$32.18 "  
(Here follow other names and amounts similar to the foregoing.)

The foregoing section undertakes to appropriate money from the Escheats Fund. That fund is provided for by Sections 620 and 621, R. S. 1939. Said sections read as follows:

Section 620:

"If any person die intestate, seized of any real or personal property, leaving no heirs or representatives capable of inheriting the same; or, if upon final settlement of an executor or administrator, there is a balance in his hands belonging to some legatee or distributee who is a non-resident or who is not in a situation to receive the same and give a discharge thereof or who does not appear by himself or agent to claim and receive the same; or, if upon final settlement of an assignee for the benefit of creditors, there shall remain in his possession any unclaimed dividends; or, if upon final report of any sheriff to the court, it is shown that the interests in the proceeds of the sale of land in partition of certain parties, who are absent from the state, who are non-residents, who are not known or named in the proceedings, or who, from any cause, are not in a situation to receive the same, are in his hands unpaid and unclaimed; or, if, upon final settlement of the receiver of any company or corporation which has been doing business in this state, there is money in his hands unpaid and unclaimed, in each and every such instance such real and personal estate shall escheat and vest in the state, subject to and in accordance with the provisions of this chapter."

Section 621:

"Within one year after the final settlement of any executor or administrator, assignee, sheriff or receiver, all moneys in his hands unpaid or unclaimed, as provided in section 620, shall, upon the order of the court in which such settlement is made, be paid into the state treasury. And the state treasurer shall issue to him a duplicate receipt therefor, one of which shall be filed with the state auditor, who shall credit him with the amount thereof and charge the state treasurer therewith. All such moneys so received into the state treasury shall be credited into a fund, to be known and designated as 'escheats.'"

Apparently the receivers of various banks have turned over to the State Treasury unclaimed funds in their hands at the close of the liquidation of said banks. Sections 623 and 624 provide how money paid into the State Treasury as provided by Sections 620 and 621 may be recovered by those claiming same. Sections 623 and 624 read 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."

"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."

We find no other manner provided by law for the recovery of such funds by those claiming same. The court which had jurisdiction of the funds originally must make a finding and order in favor of a claimant before such funds can be withdrawn from the State Treasury.

Section 642 R. S. 1939 provides as follows:

"All moneys paid into the state treasury under the provisions of this chapter, after remaining therein unclaimed for twenty-one years, shall escheat and vest absolutely in the state and be, on the order of the board of fund commissioners, transferred to the public school fund."

It will be seen by Sections 620 and 642, supra, that the funds do not become state funds until twenty-one years after being paid into the State Treasury. Section 620 provides that said funds shall escheat and vest in the state subject to and in accordance with the provisions of this chapter. Section 642 is a part of that chapter, and it provides that the funds shall escheat and vest in the state after they have remained in the treasury unclaimed for twenty-one years. The funds sought to be appropriated by H. B. 445 have evidently not been in the treasury twenty-one years. However, if said funds have been in the State Treasury twenty-one years they are not subject to appropriation by the Legislature. Section 5, Art. IX of the Constitution of 1945 definitely earmarks such funds as a public school fund. Said section reads as follows:

"The proceeds of all certificates of indebtedness due the state school fund, and all moneys, bonds, lands, and other property belonging to or donated to any state fund for public school purposes, and the net proceeds of all sales of lands and other property and effects that may accrue to the state by escheat, shall be paid into the state treasury, and securely invested under the supervision of the state board of education, and sacredly preserved as a public school fund the annual income of which shall be faithfully appropriated for establishing and maintaining free public schools, and for no other uses or purposes whatsoever."

Under the foregoing constitutional provision, the Legislature cannot appropriate the public school fund, but can only appropriate the annual income from it, and that income can be appropriated for establishing and maintaining free public schools and for no other purpose.

#### Conclusion

It is, therefore, the opinion of this office that Section 9.100 of H. B. 445 of the Sixty-Fourth General Assembly is ineffective and that before persons

named as beneficiaries in said bill can be paid they must secure an order of the court which originally had jurisdiction of the funds they claim.

Yours very truly,

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HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

HHK/vlv