

Opinion No. 59-168

October 20, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Honorable W. B. Hazen Probate Judge Grant County Silver City, New Mexico

{*260} This is in response to your request for an opinion on the following question:

"May unidentified funds which are presumably from unclaimed estates dating back as far as 1925 and which were deposited by various probate judges in a savings account be turned over to the current school fund?"

It is our opinion that the funds should be turned over to the County Treasurer to be held by the Treasurer for a period of one year and then remitted to the State Treasurer to be credited to the state school fund.

§ 29-1-21, N.M.S.A., 1953 Compilation provides:

"If there be property remaining uninherited, it shall be escheat to the state."

Since no court action is required to declare an escheat, title automatically passes to the State. **Schmitz v. New Mexico State Tax Commission**, 55 N.M. 320.

Under §§ 31-15-1 to 31-15-6 there is outlined the procedure to be taken in the case of property which is to escheat to the state. Presumably in the case of the funds you now have, the proper steps have been taken by the probate judges who deposited this money in the savings account. You are correct in contending that this money should have been turned over to the County Treasurer pursuant to § 31-15-4, N.M.S.A. 1953 Compilation, and it should not have been placed in an account opened by the probate court.

{*261} The correct procedure to be taken at this time is to turn this money over to the County Treasurer who must hold it for one (1) year pursuant to § 31-15-6, N.M.S.A. 1953 Compilation, and if no application is made by any person to administer any of the estates within that time, the funds should then be remitted to the State Treasurer to be made a part of the current school fund pursuant to Article XII, § 4 of the New Mexico Constitution.

It is our belief that this procedure is best because of the fact that you are unable to ascertain at this time whether or not this money came into the possession of the probate court as a result of having no one to inherit under § 29-1-21 or from an abandoned estate under §§ 31-15-1 to 31-15-6. Therefore, it is suggested that you follow the procedure outlined under the latter sections so that there can be no question of the propriety of your actions.

I am enclosing a copy of Attorney General's Opinion No. 1795 which deals with this problem. Section 38-112 of the 1929 compilation referred to in that opinion is now codified as § 29-1-21 and §§ 44-104 and 44-106 are now codified as §§ 35-15-4 and 35-15-6.

We trust this opinion will assist you in your effort to see that these funds are properly paid over to the State.

B. J. Baggett

Assistant Attorney General