

Opinion No. 69-33

April 23, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Franklin Jones, Commissioner of Revenue, Bureau of Revenue, Santa Fe, New Mexico

QUESTIONS

FACTS

In 1969 \$ 78.75 for child support purposes was deposited to the credit of Mrs. LaWanda Alice Bible with the Clerk of the Lea County District Court in compliance with an order of that court in its cause number 14,790. Mrs. Bible did not know of the fact of this deposit so failed to claim same from the District Court Clerk.

On October 4, 1968, the Clerk of the District Court of Lea County filed with the Unclaimed Property Division of the Bureau of Revenue a report of property presumed abandoned. One item of that report was \$ 78.75 belonging to LeWanda Alice Bible. As required by § 22-22-13 of the statutes, the Bureau of Revenue published a Notice of Names of Persons Appearing to be Owners of Abandoned Property. This notice included the Bible \$ 78.75. Word of this advertising was communicated to Mrs. Bible by a friend. Mrs. Bible thereupon made demand upon the Bureau of Revenue for payment to her of this money.

However, in remitting to the Bureau of Revenue the Lea County District Court Clerk withheld \$ 58.24 of the Bible deposit, the district court having entered an order on February 25, 1969, "that the clerk withhold the sum of \$ 58.24, an overpayment of forfeiture, to the State of New Mexico in prior years, as shown by audit report of June 1966."

Further investigation by the Bureau revealed that the withheld \$ 58.24 was not an overpayment to the Bureau of Revenue but instead a portion of a lump sum remittance to the state treasurer by the Lea County District Court of "items accumulated since July 1, 1945, and unidentifiable as to ownership". By check dated March 25, 1968, the Clerk of the Lea County District Court remitted to the State Treasurer the money which the court forfeited and ordered remitted to the State Treasurer. It is assumed the \$ 58.24 "overpayment" referred to in the Order of Forfeiture dated February 25, 1969, was included in the March 25, 1968, remittance by the Lea County District Court Clerk to the state treasurer. In any event, \$ 58.24 of the money reported to the Bureau of Revenue by the Clerk of the Lea County District Court was never remitted to the Bureau of Revenue by the court. Accordingly, the Bureau of Revenue is unable to comply with the

demand of Mrs. LaWanda Alice Bible, now LaWanda Alice Bible Webster, that the sum of \$ 78.75 belonging to her be paid over to her.

Apparently the above problem has arisen by reason of two statutes, each of which deals with money held by a court. Section 22-22-9, N.M.S.A. 1953 (being § 9 of Chapter 132, Laws of 1959) reads:

All intangible personal property 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 ten years is presumed abandoned.

Section 22-22-12, N.M.S.A., 1953 Compilation requires every person holding funds or other property, tangible or intangible, presumed abandoned to report same to the Commissioner of Revenue. Section 22-22-14 requires every person who has filed such report to pay or deliver to the commissioner all such abandoned property unless an owner establishes his right to receive same within the time specified in § 22-22-13. It was under these sections of the statutes regarding the disposition of unclaimed property (22-22-1 et seq.) that the Clerk of the Lea County District Court paid over certain moneys to the Bureau of Revenue in February of 1969.

Section 16-3-25, N.M.S.A., 1953 Compilation, as amended, with Laws of 1963, Chapter 214, § 1; it provides:

In all cases where money is held by a clerk of the district court under any judgment or decree and the person entitled to it does not make claim within six (6) years from the date when it became payable, the district court shall order it forfeited by filing a written order of the court. Upon filing of the written order of the court, the clerk shall remit the money to the state treasurer for credit to the current school fund of the state. No claim of any person to the money is valid unless filed in writing with the clerk within six (6) years from the date it became payable. (Original § 16-3-25 was. '41, Ch. 95, § 1)

Apparently the Lea County District Court acted under § 16-3-25 in its 1968 action ordering money forfeited and remitted direct to the State Treasurer. Its 1969 order directed the clerk to remit to the State Treasurer, but the remittance actually came to the Bureau of Revenue, as did also the clerk's report of property presumed abandoned.

QUESTIONS

How should the District Court Clerk, the Bureau of Revenue, and the State Treasurer handle money held by the District Court Clerk under a judgment or decree without claim being made within six years from the date the money became available?

CONCLUSION

See analysis.

OPINION

{*49} ANALYSIS

As pointed out in the facts submitted to this office, there appears to be a conflict between the Uniform Disposition of Unclaimed Property Act and Section 16-3-25, N.M.S.A., 1953 Compilation in the procedure to be followed by the District Court Clerk in handling unclaimed money paid to the clerk under a judgment or decree. Section 22-22-9, of the Uniform Disposition of Unclaimed Property Act provides in part that:

All intangible personal property held for the owner by any court . . . that has remained unclaimed by the owner for more than ten years is presumed abandoned.

A claim can be made under the Uniform Disposition of Unclaimed Property Act by the owner of the intangible personal property after the lapse of ten years if the proper procedure is followed by the owner. Section 16-3-25, N.M.S.A. 1975 Compilation provides that no claim for unclaimed property held by the district court clerk under any judgment or decree is valid unless the claim is filed in writing with the clerk within six years from the date the claim became payable.

In Opinion of the Attorney General No. 59-192, issued November 23, 1959, this office stated that there was an irresconcilable conflict between the Uniform Disposition of Unclaimed Property Act and Section 16-3-25, supra. It was concluded that since Section 22-22-9 of the Uniform Disposition of Unclaimed Property Act was the last enactment, it controlled over Section 16-3-25, supra. We can no longer agree with that conclusion because Section 16-3-25 was re-enacted by the legislature after issuance of Opinion of the Attorney General No. 59-192. Under the analysis presented in Opinion No. 59-192, Section 16-3-25 would control since it was enacted in 1963 and Section 22-22-9 {*50} of the Uniform Disposition of Unclaimed Property Act was enacted in 1959.

It is a fundamental rule of statutory construction that when two statutes relate to the same subject matter they are to be harmonized if possible and effect given to each. **Allen v. McClellan**, 75 N.M. 400, 405 P.2d 405 (1965); **Atchison, T. & S.F. Ry. Co. v. Town of Silver City**, 40 N.M. 305, 59 P.2d 351 (1936). The provisions of the Uniform Disposition of Unclaimed Property Act and Section 16-3-25, supra, can both be construed harmoniously and it is our opinion that effect should be given to both enactments of the legislature.

It is the opinion of this office that Section 22-22-17 of the Uniform Disposition of Unclaimed Property Act controls the disposition of proceeds held by a district court clerk pursuant to Section 16-3-25, supra. Section 22-22-17, supra, provides as follows:

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a

report required by the Uniform Disposition of Unclaimed Property Act (22-22-1 to 22-22-29) or to pay or deliver abandoned property to the commissioner. Emphasis added)

The Commissioners on Uniform State Laws state that this section of the Uniform Disposition of Unclaimed Property Act

treats unclaimed property as subject to the Act even though the period of limitations has run prior to date of presumed abandonment.

See 9A Uniform Laws Annotated 516 (P.S. p. 97). The Supreme Court of California further explained this section of the Uniform Disposition of Unclaimed Property Act as follows:

This section deals with the continuing situation in the administration of the act arising from the fact that frequently the statute of limitations against the owner will have run before the property is presumed abandoned and required to be reported.

Douglas Aircraft Company v. Cranston, 374 P.2d 819, 822 (1962). The California Supreme Court on to explain that the draftsmen of the Uniform Disposition of Unclaimed Property Act

appear to have been preoccupied with the problem of whether the statute of limitations applicable between the holder and owner could be made inapplicable to the duty to report and pay to the state . . . (Id at 823).

Absent Section 22-22-17, *supra*, it might be argued that the the state could not enforce a claim against the holder of intangible personal property when the statute of limitations had already run against the owner of the property. See **Central Power and Light Company v. State**, 410 S.W.2d 18 (Ct. of Civil. App., Tex., 1966). We do not believe that Section 22-22-17 was intended to revive the claim of the owner of the property against the state after the statute of limitations has run. To give Section 22-22-17, *supra*, such a reading would be to thwart the very purpose of a statute of limitations, that is to prevent claims which because of a lapse of time evidence has been lost, memories have faded and witnesses have disappeared. It is, therefore, our opinion that the Commissioner of Revenue should deny any claim of an owner of intangible personal property if the statute of limitations has run before the property is presumed abandoned. It should be pointed out that the {*51} holder of the property presumed abandoned does not have to attempt to communicate with the owner of the property if the owner's claim has been barred by the statute of limitations. Section 22-22-12 E of the Uniform Disposition of Unclaimed Property Act. We therefore believe that the district court clerk did not have a duty to attempt to contact Mrs. LaWanda Alice Bible Webster under the Uniform Disposition of Unclaimed Property Act.

From the foregoing it must be concluded that Mrs. Webster is barred by Section 16-3-25, *supra*, from asserting a valid claim against the District Court Clerk, the

Commissioner of Revenues or the State Treasurer. This is made clear by the language of Section 16-3-25, supra, which provides in part that:

No claim of any person to the money is valid unless filed in writing with the clerk within six [6] years from the date it became payable. (Emphasis added)

What then are the duties of the District Court Clerk with money held pursuant to Section 16-3-25, supra? Under Section 22-22-9, supra, money held by the clerk pursuant to Section 16-3-25, supra, is not presumed abandoned unless it has remained unclaimed by the owner for more than ten years. Section 22-22-17, supra, then provides that the district court clerk has the duty to file a report required by the Uniform Disposition of Unclaimed Property Act. This report is prescribed by Section 22-22-12 of this Uniform Act. The District Court Clerk then has the duty under Section 22-22-17, supra, to pay or deliver the abandoned money to the Commissioner of Revenue.

It has already been concluded that the Commissioner of Revenue can assert the bar of Section 16-3-25 against Mrs. Webster. Even so it appears that the commissioner must deposit all funds he has received under the Uniform Disposition of Unclaimed Property Act in the "reserve investment fund". After the money has resided in the reserve investment fund for a period of twenty-five years, the Attorney General may commence escheat proceedings. Eventually the money will be credited to the current school fund of the state. See Section 22-22-20 A of the Uniform Disposition of Unclaimed Property Act.

In the present case part of the money has already been deposited in the current school fund of the state pursuant to Section 16-3-25, supra. This money may not be paid out of the treasury without an appropriation. Article IV, Section 30, New Mexico Constitution. However, since the money would have been eventually deposited in the current school fund, very little harm has been done by the District Court Clerk following the provisions of Section 16-3-25 rather than Sections 22-22-9 and 22-22-17 of the Uniform Disposition of Unclaimed Property Act.

Last of all it should be pointed out that as of July 1, 1969, Section 16-3-25, as it now reads, will have been repealed. Effective July 1, 1969, Section 16-3-26, N.M.S.A., 1953 Compilation will provide as follows:

When money is held in the court clerk trust account and the person entitled to it does not make claim within six [6] years from the date when it became payable, the money is presumed abandoned and shall be disposed of in the manner provided in the Uniform Disposition of Unclaimed Property Act. [22-22-1 to 22-22-29]