

Opinion No. 37-1543

February 27, 1937

BY: FRANK H. PATTON, Attorney General

TO: New Mexico Relief and Security Authority Santa Fe, New Mexico. Attention: Mr. Fay Guthrie, Adm.

{*55} This is to acknowledge receipt of your letter of February 24th in which you inquire as to disposition of three United States Treasury checks and Postal Savings Certificates totaling \$ 131.69, which were found on a deceased transient who {*56} has no relatives or friends you are able to locate.

It is our opinion that this matter comes under the provisions of Chapter 44 of the New Mexico Statutes Annotated, 1929 Compilation, relative to escheat of property.

Section 44-101 provides that when any person shall die within the limits of any county of the state and the Probate Judge shall learn that his effects and property are abandoned, he shall order the Sheriff of the county to take charge of the effects and property, keep the same in his custody and care and make out and return an inventory of each and every article thereof.

Section 44-102 provides for a sale of the property if after the expiration of thirty days no person has made a claim to the same. The manner of conducting this sale is set out in detail in this section.

Section 44-103 provides for the payment of all debts of the deceased person and for payment to the Sheriff for services in taking possession and charge of effects of the deceased.

Section 44-106 provides for the turning over of all surplus funds to the County Treasurer, who shall issue a duplicate receipt to the Sheriff for the amount received by him.

Section 44-106 provides that the Treasurer shall keep the funds for one year and after that date no claims against the estate shall be recognized. By Article XII, Section 4 of the Constitution, such funds shall be by him turned over to the State Treasurer and covered into the general fund.

The rights of the creditors of the deceased person are set out in Section 44-105. If there are such creditors, by this section and other general provisions of our laws on executors and administrators, they have the right to secure letters of administration in order to effect the payment of their claims.

It is our opinion that the provisions for a sale of the property under Section 44-102 could be obviated by an order of the Court as there would be no necessity for such a sale because the effects of the debtor are tantamount to legal tender.

If there are no creditors who wish to have this estate administered, we would suggest that you turn this matter over to the District Attorney of the Seventh Judicial District in order that he may take the necessary steps to have the property escheated to the state under the provisions above quoted.

Trusting this answers your question, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.