

N.D.A.G. Letter to Kingstad (Nov. 28, 1990)

November 28, 1990

Timothy L. Kingstad, Commissioner
North Dakota State Land Department
918 East Divide Avenue, Suite 410
Drawer 5523
Bismarck, ND 58502-5523

Dear Commissioner Kingstad:

Thank you for your October 8, 1990, letter in which you request my opinion as to the applicability of the Unclaimed Property Act to state agencies.

N.D.C.C. ch. 47-30.1, the Unclaimed Property Act (hereafter Act), sets forth procedures by which holders of unclaimed property must transfer the property to the unclaimed property office for the purpose of uniting the owner with the property. The language of N.D.C.C. ch. 47-30.1 supports the conclusion that state agencies fall within the ambit of the statute. State agencies are not specifically exempt from N.D.C.C. ch. 47-30.1. N.D.C.C. § 47-30.1-01(7) defines "holder" as "a person" who is a trustee, is in possession of property belonging to another, or is indebted to another. "Person" is defined, in part, as a "state or other government, governmental subdivision or agency." N.D.C.C. § 47-30.1-01(12). Thus, it is my opinion the Act applies to North Dakota state agencies.

The North Dakota Unclaimed Property Act addresses the disposition of intangible property held by public agencies. N.D.C.C. § 47-30.1-13 provides that intangible property held by a "state, or other government, governmental subdivision or agency" which remains unclaimed by the owner for more than five years after becoming distributable is presumed abandoned. The North Dakota Supreme Court has not addressed the issue of what constitutes intangible property. However, that issue has been addressed by the Wisconsin Supreme Court with regard to its Unclaimed Property Act. Employers Ins. of Wausau v. Smith, 453 N.W.2d 856 (Wis. 1990). In Smith, the Wisconsin Supreme Court addressed the relationship between the Wisconsin Unclaimed Property Act and the Wisconsin worker's compensation law. The court addressed a statute that provides "all intangible property . . . that is held, issued or owing in the ordinary course of the holder's business and that has remained unclaimed by the owner for more than 5 years after it became payable or distributable is presumed abandoned." (original emphasis.) Id. at 859. The court concluded that uncashed checks issued pursuant to the worker's compensation law "are intangible properties subject to the reporting and delivery requirement of the Wisconsin Unclaimed Property Acts." Id. at 857.

Although the Smith decision is not binding in North Dakota, it is an aid in understanding the application of the North Dakota law. Thus, based on the reasoning in Smith, unclaimed intangible property held by state agencies in excess of five years after the

property becomes distributable is subject to the provisions of the North Dakota Act.

In reaching my conclusions it is notable that North Dakota's Unclaimed Property Act and the law authorizing state agencies to make payments to persons complement each other. An agency issuing a check to a person does so because that person is legally entitled to the money. The Unclaimed Property Act seeks to ensure that the money reaches the person entitled to it.

I trust this answers your questions.

Sincerely,

Nicholas J. Spaeth

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