

N.D.A.G. Letter to Peterson (Aug. 4, 1992)

August 4, 1992

Honorable Robert W. Peterson
State Auditor
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505

Thank you for the April 14, 1992, letter sent by Audit Director Wayne Hokenson of your office concerning the application of North Dakota's unclaimed property act, North Dakota Century Code (N.D.C.C.) ch. 47-30.1, with respect to warrants canceled by counties, school districts, and cities.

N.D.C.C. §§ 11-25-05, 15-29-14, and 40-16-13 allow counties, school districts, and cities, respectively, to cancel warrants drawn on any fund of the governmental subdivision that remain unpaid for one year or more. Before canceling the warrant, the governmental body must enter on its minutes a description of the warrant containing the name of the payee, the number of the warrant, the date, and the amount of each warrant to be canceled. The entities have authority to issue a new warrant if the person entitled to it appears and gives good and sufficient reasons for a delay in calling for the warrant and presenting it for payment.

None of these statutes provide that the cancelation of the warrant has any effect on the obligation owed by the governmental entity to the payee of the warrant.

N.D.C.C. ch. 47-30.1, North Dakota's version of the Uniform Unclaimed Property Act, generally provides for all unclaimed intangible property to be paid over to the unclaimed property administrator for administration and attempts to find the owner. The term "intangible property" is defined by the unclaimed property act to include "moneys, checks, drafts, deposits, interest, dividends, and income." N.D.C.C. § 47-30.1-01(9). Use of the term "includes" indicates that the definition of intangible property is not limited to the specific items listed but is intended to provide a basis for enlargement of the items falling under the definition. See Lucke v. Lucke, 300 N.W.2d 231 (N.D. 1980). One is a "holder" of intangible property under the unclaimed property act if the person is in possession of property belonging to another, is a trustee, or is indebted to another on an obligation. N.D.C.C. § 47-30.1-01(7). A "person" is defined to include the state and governmental subdivisions or agencies. N.D.C.C. § 47-30.1-01(12).

Specifically with respect to checks, N.D.C.C. § 47-30.1-02.1 provides that checks held, issued, or owing in the ordinary course of the holder's business which remain uncashed by the owner for more than two years after becoming payable are presumed abandoned. With respect to property held by public agencies, N.D.C.C. § 47-30.1-13 provides that

intangible property held by the state or other governmental subdivision which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned. N.D.C.C. § 47-30.1-03.1 relates to abandonment of intangible property which has been issued by the state, a political subdivision, or business association in this state, if the owner has not claimed the property within three years after the date prescribed for its payment or delivery. A prescribed payment date does not apply to a check under normal conditions and N.D.C.C. § 47-30.1-03.1(2) excludes the application of the section if another law contains a different dormancy period. These provisions make N.D.C.C. § 47-30.1-13 applicable rather than N.D.C.C. § 47-30.1-03.1.

On the surface, there may appear to be a conflict between the special provisions of law that authorize counties, school districts, and cities to cancel warrants, and the general provisions of the unclaimed property act concerning when intangible property is deemed to be abandoned and subject to the jurisdiction of the state's unclaimed property office. However, when a general provision in a statute is in conflict with a special provision in the same or another statute, the two must be construed, if possible, so that effect may be given to both provisions. N.D.C.C. § 1-02-07. District One Republican Committee v. District One Democratic Committee, 466 N.W.2d 820 (N.D. 1991).

Applying this rule of statutory construction, and reading the provisions of the unclaimed property act together with the statutes authorizing cancelation of warrants, it is my opinion that counties, school districts, and cities may exercise their statutory authority to cancel warrants, but that the cancelation of the warrant does not extinguish the underlying obligation. The underlying obligation continues and is subject to the abandonment provisions of the unclaimed property act, N.D.C.C. ch. 47-30.1. The statutes may be construed to give effect to both of them by noting that if a county, school district, or city acts to cancel a warrant (check) in more than one year but less than two years after it became payable, then there is no longer an issued warrant (check) and N.D.C.C. § 47-30.1-02.1 does not apply. However, under these circumstances, the obligation continues and may be deemed abandoned under N.D.C.C. § 47-30.1-13 when the provisions of that section are fulfilled. If, on the other hand, the county, school district, or city does not act to cancel a warrant (check) within two years of its becoming payable, then the warrant (check) is still deemed issued and would be presumed abandoned under N.D.C.C. § 47-30.1-02.1 as unclaimed property.

It is interesting to note that N.D.C.C. ch. 47-30.1 applies to state checks too, and that the legislature has enacted a specific procedure for the state treasurer to use in transferring funds to the unclaimed property administrator for administration under the chapter. See N.D.C.C. § 54-27-15.1.

I believe this opinion will be satisfactory for your purposes.

Sincerely,

Nicholas J. Spaeth

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