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STATE OF NEBRASKA
OFFICIAL
JUN 7 1993
DEPT. OF JUSTICE

DATE: June 1, 1993

SUBJECT: Application of the Uniform Disposition of Unclaimed Property Act to partial payments of real and personal property taxes due counties.

REQUESTED BY: John A. Breslow, Nebraska Auditor of Public Accounts
Dawn E. Rockey, Nebraska State Treasurer

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

On the basis of *Neb. Rev. Stat.* § 77-1719.05 (1990) and prior advice of this office, some county treasurers in Nebraska accept partial payments of real and personal property taxes due the county. Those partial payments are then apparently held in some form of partial payment account. You have now asked whether these partial property tax payments held by the counties must be remitted to the State Treasurer as unclaimed property under the Nebraska Uniform Disposition of Unclaimed Property Act, *Neb. Rev. Stat.* §§ 69-1301 to 69-1329 (1990). In our view, such partial payments are not unclaimed property, and need not be remitted to the state.

The Uniform Disposition of Unclaimed Property Act (the "Act") is a means whereby certain types of unclaimed property held by particular institutions for their true owners are remitted to the Nebraska State Treasurer for safe keeping on behalf of the true owners after a set period of time. For example, an unclaimed savings account balance held by a banking institution in Nebraska would be turned over to the State Treasurer on behalf of the true owner after it had been abandoned for five years. Under the provisions of the Act, the Treasurer takes specified actions to find the true owners of this unclaimed property, and the true owners of such property held by the Treasurer can reclaim it at any time. It is clear that the state's rights to the unclaimed property in question are strictly derivative, and that the state has only a custodial interest in the property on behalf of the true

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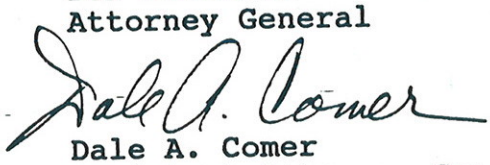
owner. *State ex rel. Marsh v. Nebraska State Board of Agriculture*, 217 Neb. 622, 350 N.W.2d 535 (1984).

The Act was amended during the last Special Session of the Nebraska Legislature in 1992. Among other things, the changes in the Act at that time made it clear that unclaimed property held by governmental subdivisions such as counties must be remitted to the State Treasurer along with unclaimed property held by various financial institutions and other entities. In light of this change, you have now asked if counties must remit partial payments of property tax to the State Treasurer as unclaimed property.

We do not believe that the partial payments of property taxes in question must be paid to the State Treasurer as unclaimed property for the simple reason that the true owner of such payments is the county. As noted above, the State Treasurer holds unclaimed property under the Act in a custodial capacity for the true owner, and the true owner can reclaim it at any time. However, the payments at issue in the present instance involve partial payment of taxes due the county. As a result, the county treasurers who accept such partial payments do not hold them in a custodial capacity for some true owner. Rather, they hold such funds as funds due and owing to the county. They therefore have no obligation to report or remit such partial tax payments to the State Treasurer as unclaimed property.[1]

Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
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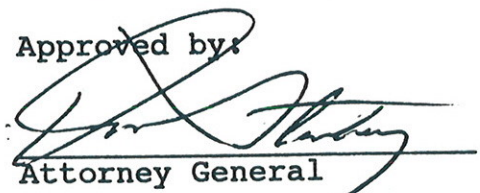

Attorney General

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[1] By way of contrasting example, a county warrant or check drawn on the county and payable to a particular individual which remained uncashed and unclaimed would constitute unclaimed property of that individual. The amount of funds represented by that uncashed warrant would have to be remitted to the State Treasurer after a set period of time for safe keeping on behalf of the true owner.