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NO.
STATE OF NEBRASKA
OFFICIAL
APR 3 1995
DEPT. OF JUSTICE

DATE: March 31, 1995

SUBJECT: Uncashed State Warrants as Unclaimed Property Under the Uniform Disposition of Unclaimed Property Act; Public Access to the Listing of Uncashed Warrants

REQUESTED BY: David Heineman
Nebraska State Treasurer

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

In your recent opinion request letter, you posed a number of questions concerning the Uniform Disposition of Unclaimed Property Act, ***Neb. Rev. Stat. §§*** 69-1301 through 69-1329 (1990, Cum. Supp. 1994) (the "Act" or the "Unclaimed Property Act"), and its application to state agencies and uncashed state warrants.

Under the Nebraska Constitution and pertinent provisions of the Nebraska Statutes, no monies can be withdrawn from the Nebraska State Treasury except as pursuant to a specific appropriation and upon presentation of a properly issued state warrant. Neb. Const. art. III, § 25; ***Neb. Rev. Stat. §§*** 77-2201 through 77-2215 (1990, Cum. Supp. 1994). As a result, state expenditures, whether for payroll or other purposes, are generally accomplished through the issuance of state warrants.

In your letter, you indicate that your office maintains a listing of all state warrants which remain uncashed after the date of their issuance. You state that this list is "utilized by professional finders," and we presume that you mean that those finders use the list to contact persons who are the payees on uncashed state warrants with an offer to assist those persons in

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obtaining their money for payment of an appropriate finder's fee. Your various questions involve this list of uncashed warrants and application of the Unclaimed Property Act to the warrants themselves.

We will begin our analysis with a discussion of one of the questions posed at the end of your letter, and then turn to your other inquiries.

1. Application of the Unclaimed Property Act to the State of Nebraska and its governmental subdivisions.

In the latter portion of your opinion request letter, you ask whether the Unclaimed Property Act applies to the State of Nebraska, and whether state agencies should report unclaimed property such as uncashed warrants to your office. Under the most recent Nebraska version of the Act, the State and its governmental subdivisions are included, and are required to report unclaimed property to the State Treasurer where appropriate.

Nebraska's original version of the Unclaimed Property Act was passed in 1969. 1969 Neb. Laws LB 642. That Act, in turn, was modeled in great part upon the Uniform Disposition of Unclaimed Property Act promulgated in 1966 by the National Conference of Commissioners on Uniform State Laws. However, the original Nebraska Act differed from the Uniform Act in at least one respect. The Uniform Act contained definitional and other provisions which clearly applied the Act to governmental agencies including the state and its governmental subdivisions. The original Nebraska Act was passed without those provisions, so that, from its inception, the Nebraska version of the Unclaimed Property Act did not apply to the state, its counties, municipalities, etc. We have indicated as much informally on several occasions to your predecessors as State Treasurer.

During the Third Special Session of the Nebraska Legislature held in 1992, the Unclaimed Property Act was amended to reach unclaimed property held by government and governmental and public entities. Introducer's Statement of Intent on LB 26, 92nd Neb. Leg., 3rd Spec. Sess.; Committee Records on LB 26, 92nd Neb. Leg., 3rd Spec. Sess. 3 (Sept. 23, 1992) (Statement of Treasurer Rockey). As a result, Section 69-1307.01 (1994) now provides:

> Except as otherwise provided by law, 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 three years is presumed abandoned.

(emphasis added). In addition, the definition of "person" for purposes of the Act, as defined in Section 69-1301(g), now reads:

> Person means any individual, business association, ***governmental or political subdivision, public corporation, public authority***, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(emphasis added). Therefore, we believe that the state and its governmental subdivisions are covered by the Act, and must report unclaimed property to your office in those instances where they hold property subject to the provisions of the Act.

2. Application of the Unclaimed Property Act to uncashed state warrants.

As noted above, the expenditures of state government are generally accomplished through the issuance of state warrants. You wish to know if, under Section 69-1307.01, those warrants which remain uncashed after 3 years are subject to the Unclaimed Property Act and must be reported to your office. In our view, the answer to that question is "no."

In our Op. Att'y Gen. No. 94097 (December 8, 1994), we concluded that county warrants are evidence of indebtedness and causes of action which constitute intangible personal property. As a result, those warrants are subject to the reporting requirements of Section 69-1301.01. In a similar fashion, state warrants constitute evidence of indebtedness and causes of action. As stated by the Supreme Court of Florida in ***State v. Family Bank of Hallandale***, 623 So.2d 474 (1993):

> Warrants are devices, prescribed by law, for drawing money from the state treasury. They are orders issued by the official whose duty it is to pass on claims to the treasurer to pay a specified sum from the treasury for the persons and purposes specified. A warrant is not an order to pay absolutely, rather it is generally prima facie evidence of indebtedness payable out of a particular fund or appropriation. . . .
>
> A warrant is best characterized as a chose in action, payable when funds are available for its purpose.

Id. at 476 (citations omitted). Therefore, state warrants are also intangible personal property. Section 69-1301.01 applies to intangible personal property held by a "public authority" or a "public officer," which would seem to include state officers and

state agencies. Consequently, we believe that state warrants are included under the language of Section 69-1301.01.

On the other hand, another statutory provision must also be considered in our analysis in response to your question. ***Neb. Rev. Stat. §*** 77-2205 (1994) provides, as is pertinent:

> The State Treasurer shall not pay any warrant, unless registered for any of the reasons set forth in this section, which is presented to him or her for payment more than two years after the date of its issuance if issued prior to October 1, 1992, or one year after the date of its issuance if issued on or after October 1, 1992, and any such warrant shall cease to be an obligation of the State of Nebraska and shall be charged off upon the books of the State Treasurer. Except as otherwise provided by law, the amount stated on such warrant shall be credited to the General Fund. Such warrant may, however, thereafter by presented to the State Claims Board which may approve a claim pursuant to the State Miscellaneous Claims Act for the amount of the warrant.

On the basis of this statute, state warrants which are uncashed "cease to be an obligation of the State of Nebraska" one year after they are issued, and are credited to the state General Fund.[1]

Under Section 69-1307.01, state agencies or officers holding unclaimed state warrants have an obligation to report and remit those items to the State Treasurer three years after their date of issuance. However, under Section 77-2205, those same warrants cease to be an obligation of the State of Nebraska and are credited to the state General Fund one year after their issuance. The state's right to unclaimed property under the Unclaimed Property Act is strictly derivative, and the State acquires no greater right than the owner. ***State ex rel. Marsh v. Nebraska State Board of Agriculture***, 217 Neb. 622, 350 N.W.2d 535 (1984). Therefore, it appears to us that state agencies and officers have no uncashed or unclaimed state warrants to report to your office three years after those warrants are issued. Those warrants have

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[1] We would note that this situation is different from that involving an action which is barred by an applicable statute of limitations. In the latter instance, the cause of action continues to exist, it is simply barred by the limitation. Under Section 77-2205, the obligation against the State ceases to exist. Therefore, Section 69-1315 does not apply to obviate the statute of limitations and require that the warrants be reported.

expired, and have already been placed in the State Treasury.[2] For that reason, we do not believe that uncashed state warrants which remain uncashed for three years must be reported to your office. Those warrants will already have been removed as obligations of the State and discharged from your records.

You also inquire as to whether uncashed state warrants which are payroll checks must be reported to your office as unclaimed property after one year under Section 69-1307.02. That section provides:

> Unpaid wages, including wages represented by payroll checks owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable, are presumed abandoned.

While Section 69-1307.02 appears to cover uncashed payroll warrants issued by the State, Section 77-2205 again prevents application of that statute for the reasons discussed above. Under Section 77-2205, the obligation inherent in the payroll warrant issued by the state would cease to exist one year after its issuance, at the same time as the duty to report it under the Act would arise. Under those circumstances, we do not believe that uncashed state payroll warrants need be reported to your office.

3. <u>Access to lists of uncashed warrants by professional finders and others.</u>

Your final questions to us concern public access to the listing of uncashed warrants which is maintained by your office.

Section 69-1317 provides that all funds received by your office under the Unclaimed Property Act shall be deposited in a separate trust fund which is used for the payment of unclaimed property claims and for the transfer of monies to the permanent school fund. In connection with that deposit process, Section 69-1317(a)(1) also provides:

> Before making the deposit he or she [the State Treasurer] shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report

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[2] The provisions of Section 77-2205 do not include registered warrants, and presumably those warrants would be reportable under the Act.

> of a life insurance company, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours.
>
> The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed.

You wish to know how Section 69-1317(a)(1) affects your current practice of allowing professional finders access to the uncashed warrant listing. You ask, "[s]hould we deny access to this listing until after the warrants become unclaimed property and then only after the twenty-four month waiting period has expired or am I required by other statutes to make the uncashed warrant listing available to the public and professional finders?"

As discussed at length above, the uncashed state warrants at issue in this instance are not reportable to your office as unclaimed property because, under Section 77-2205, they cease to be an obligation of the state and are removed from your books prior to the time that they become reportable. Therefore, we do not believe that the list of uncashed state warrants is subject to Section 69-1317(a)(1) since that list does not include unclaimed property and since that list is not generated as a result of unclaimed property reports.

On the other hand, while the list of uncashed warrants is not subject to Section 69-1317(a)(1), it is subject to the Nebraska Public Records Statutes, ***Neb. Rev. Stat. §§*** 84-712 through 84-712.09 (1994). Those statutes generally provide that records of governmental agencies in Nebraska shall be made available to members of the public during normal business hours for their review. Section 84-712.05 does contain a listing of categories of documents which may be kept confidential from the public at the discretion of the agency, but none of those categories appear to apply to the uncashed state warrant list in question. Consequently, we do not believe that you should deny access to the uncashed warrant list under Section 69-1317(a)(1). Instead, you

should continue your current practice of allowing individuals access to the uncashed warrant list on the basis of the Public Records Statutes.

Sincerely yours,

DON STENBERG
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Approved:

Attorney General