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#94097

DATE: December 7, 1994

SUBJECT: Application of the Uniform Disposition of Unclaimed Property Act to Unclaimed County Warrants

REQUESTED BY: Dawn E. Rockey
Nebraska State Treasurer

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

The Nebraska version of the Uniform Disposition of Unclaimed Property Act (the Act) is found at ***Neb. Rev. Stat. §§*** 69-1301 through 69-1329 (1990, Supp. 1993). Generally, that Act provides that various forms of property such as bank deposits, monies, stock certificates, dividends, utility deposits, and other forms of intangible personal property held by entities in Nebraska such as corporations, banks and insurance companies must be reported and remitted to the Nebraska State Treasurer when that property remains unclaimed by its true owner after a set period of time. The Treasurer holds the property in a custodial capacity, and the true owner can come forward at any time to reclaim his or her property. Property which remains unclaimed over time goes to the Permanent School Fund.

The original Nebraska Act was passed in 1969, and its provisions did not apply to unclaimed property held by governmental entities and political subdivisions of the state. However, during the Third Special Session of the Nebraska Legislature held in 1992, the Act was amended to reach unclaimed property held by governmental or political subdivisions, public corporations, public officers and public authorities. In light of these developments, some political subdivisions have reviewed the statutes to determine

what forms of property must be remitted to the state, and some question has arisen with respect to county warrants. As a result, you have requested our opinion as to whether county warrants which remain unclaimed or unpaid fall under the provisions of the Act. For the reasons set out below, we believe that they do.

A county warrant is an order on the county treasurer to pay a certain sum of money. 20 C.J.S. ***Counties*** § 208. In Nebraska, such a warrant is not a negotiable instrument, and indorsees or assignees of such warrants take subject to any defenses available to the county. ***State ex rel. First National Bank of York v. Cook***, 43 Neb. 318, 61 N.W. 693 (1895). On the other hand, such warrants are prima facie evidence of an indebtedness or liability on the part of the county to pay the amount named and of the validity of the claim for which they were issued, and such warrants constitute certificates of indebtedness. ***State ex rel. First National Bank of York v. Cook, supra.***; ***Harrison County v. Ogden***, 165 Ia. 325, 145 N.W. 681 (1914); 20 C.J.S. ***Counties*** § 208. Generally, an action will lie against a county on the nonpayment of a county warrant. 20 C.J.S. ***Counties*** § 216.

Since a county warrant is a certificate of indebtedness which carries with it the right to sue the county to recover on the underlying debt, a county warrant is a chose in action. 73 C.J.S. ***Property*** § 22. A chose in action, in turn, can be classified as intangible person property. ***Kruger v. Kruger***, 73 N.J. 464, 375 A.2d 659 (1977); 73 C.J.S. ***Property*** §22. It therefore follows that a county warrant is a form of intangible personal property.

Neb. Rev. Stat. § 69-1307.01 (Supp 1993) 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). Because county warrants are intangible personal property, if they are "held for the owner" by counties when they remain unclaimed, then they are unclaimed property subject to the Act.

There is no definition of "held for the owner" contained in the Unclaimed Property Act. However, under Section 69-1301 (d) a "holder" under the Act is defined as "any person [including political subdivisions] in possession of property subject to the act belonging to another, or who is trustee in the case of a trust, or ***is indebted to another on a obligation subject to the act.***" (emphasis added). Moreover, under Section 69-1301 (f), "owner" is

defined, in part, as a "payee in case of other choses in action." When these definitions are considered, we believe that counties "hold" warrants for their owners because the counties are indebted to the owners as evidenced by the warrant itself, and because owners of county warrants are payees of a chose in action. Consequently, we believe that county warrants fit within Section 69-1307.01, and are unclaimed property subject to the provisions of the Unclaimed Property Act.

We are aware of cases such as ***Employers Insurance of Wausau v. Smith***, 154 Wis.2d 199, 453 N.W.2d 856 (1990), which indicate that unliquidated or contingent choses in action are not property held and owing which must be remitted under the Unclaimed Property Act. It would be possible to argue, based upon those cases, that county warrants do not represent liquidated claims subject to the Unclaimed Property Act since the county could raise defenses to payment of the warrants upon presentment. However, it seems to us that county warrants represent more than purely contingent claims, even though they may be subject to any defenses available to the county. As noted above, county warrants are prima facie evidence of indebtedness or liability on the part of the county to pay the amount named, and they constitute certificates of indebtedness. In addition, under ***Neb. Rev. Stat. §§*** 23-131 and 23-135 (1991), county warrants cannot be drawn until the county board has allowed the claim or account against the county. And, in passing on such claims against the county involving factual determinations, the county board acts in a quasi-judicial capacity. ***Mitchell v. Clay County***, 69 Neb. 779, 96 N.W. 673 (1903); ***Trites v. Hitchcock County***, 53 Neb. 79, 73 N.W. 215 (1897). As a result, we believe that county warrants represent claims sufficiently liquidated so as to fall under the Unclaimed Property Act.

We also understand that there is some concern that remittance of the amounts represented by unclaimed county warrants to the Treasurer as unclaimed property would violate the statutes dealing with presentation and payment of warrants, or that such a remittance would not allow the county to raise any defenses which it might have as to payment of particular warrants. In the first instance, the rights of the state under the Unclaimed Property Act are custodial, and the state can assert the rights of or stand in the shoes of the true owner of the property. ***State ex rel. Marsh v. Nebraska State Board of Agriculture***, 217 Neb. 622, 350 N.W.2d 535 (1984). Therefore, it seems to us that a remittance of the amounts represented by unclaimed county warrants to the state under the Unclaimed Property Act would effect a presentation and payment of the warrants in question. This is particularly true since the true owner could reclaim the amounts at issue at any time, and since, under the Act, the county is relieved of liability to the true owner upon remittance. We also believe that the county's remedy for any defenses which it might have as to a particular

unclaimed warrant would be to assert those defenses against the State Treasurer in lieu of payment of the amount in question. ***Employers Insurance of Wausau v. Smith, supra.***[1] In that way, the county could preserve any defenses which it might have as to individual warrants.

While we believe that county warrants are unclaimed property which fall under the Unclaimed Property Act, the question remains as to when and for what period counties are required to report and remit such unclaimed warrants to your office at this time. Under Nebraska law, legislative acts operate only prospectively unless the legislative intent that they should operate retrospectively is clearly disclosed. ***Young v. Dodge County Bd. of Sup'rs***, 242 Neb. 1, 493 N.W.2d 160 (1992). We have reviewed the statutory provisions subjecting governmental entities to the Unclaimed Property Act which were added in 1992, and, unlike the situation with the original act, there is no clear direction that they should apply retrospectively. Likewise, the legislative history of those 1992 provisions evidences no clear intent for retrospective application. As a result, we believe that the 1992 amendments pertaining to governmental entities should apply prospectively. Under such reasoning, counties must begin reporting and remitting sums representing unclaimed county warrants when there are such warrants in the possession of the counties which have remained unclaimed for three years after passage of the 1992 amendments to the Unclaimed Property Act. Unclaimed warrants for periods prior to the passage of the 1992 amendments need not be reported or remitted.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

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Approved by:

Attorney General

[1] The exception to this rule involves defenses based upon any statute of limitations which might be asserted against the true owner of the warrant. We do not believe such defenses can be asserted against the State Treasurer on the basis of ***Neb. Rev. Stat. §*** 69-1315 (Supp. 1993).