

Opinion No. 61-116

November 8, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Col. L. W. Varner, Superintendent, Fort Stanton Tuberculosis, Hospital, Fort Stanton, New Mexico

QUESTION

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In the event of death of a patient for whom we have no record of dependents, relatives, friends or beneficiaries, what disposition should be made of personal effects and/or monies left at the hospital by the deceased?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

There are two basic statutory procedures for disposing of abandoned or unclaimed personal property.

Under the provisions of the Uniform Disposition of Unclaimed Property Act, Sec. 22-22-1 through 22-22-29, N.M.S.A., 1953 Comp. (P.S.), as recently interpreted by our Supreme Court in **Clovis National Bank, et al. v. Joe Callaway**, Docket No. 6825 (1961), certain intangible property is to be placed in the custody of the State Treasurer when the whereabouts of the owner of the property is unknown.

Under the provisions of Sec. 31-15-1 through 31-15-6, N.M.S.A., 1953 Comp., an orderly procedure for the administration of certain abandoned estates is set forth.

We feel that a careful reading of the two acts will disclose no conflict in their possible applications under the circumstances set forth in this question. The Uniform Act relates merely to a transfer of custody of cash and related choses in action from certain institutional-type organizations to the State Treasurer. The Act does not involve the concept of administering an estate, but is based upon a statutory presumption that, after a given period of time, certain personal property has been abandoned by its owner.

On the other hand, the Act relating to administration of abandoned estates provides for the ultimate escheating of the estate to the State, should it not be claimed. These statutes specifically apply where any person dies within the limits of any county in the State and the probate judge is informed that the property is abandoned with no known heirs or administrators.

It is our opinion, therefore, that you should set in motion the procedures outlined in Sec. 31-15-1, et seq., for the escheating to the State of this property. This may be done on your own initiative or through the offices of your local district attorney. Briefly, the procedures consist of: (1) notifying the probate judge of the death of your patient and the lack of any known heirs or other claimants; (2) the probate judge's ordering the sheriff to take possession of the property under prescribed procedures; (3) the sale of the non-cash items of property as outlined in the Act; (4) payment of any debts allowed by the probate court; (5) payment of residue to the county treasurer; (6) payment by the county treasurer, after one year, of the residue to the State Treasurer. By terms of Article XII, Section 4 of our Constitution, such funds become a part of the current school fund.

Should your Board adopt regulations concerning payment for treatment of certain patients, and should a patient die owing your organization money under the terms of some agreement, you would be entitled to file a claim with the probate court. According to the records of the Supreme Court Librarian, however, you have not filed copies of any rules or regulations promulgated by your Board. We mention this only to point out that you might desire to adopt such regulations.