OPINION 19

OFFICIAL OPINION NO. 19

March 21, 1950.

Mr. Albert Ellis,
Superintendent,
Indiana State Farm,
Greencastle, Indiana.

Dear Sir:

Your request of December 5, 1949, for an official opinion is summarized as follows:

A prisoner at the Indiana State Farm died, leaving in the possession of the institution the sum of $315.00. From information formerly received from the prisoner, he left no will and no heirs at law entitled to his estate. Your question is what disposition may you legally make of such funds.

Your attention is directed to a manner of disposing of such funds authorized by the General Assembly of Indiana as stated by Section 1, Ch. 28 Acts of 1931, Section 13-115 of Burns Indiana Statutes which reads as follows:

“If any inmate of the Indiana State Prison, Indiana Reformatory, Indiana State Farm, Indiana Women’s (Woman’s) Prison, Indiana Boys’ School, Indiana Girls’ School who shall die, or who shall make his escape from such institution or who shall make his escape while absent from such institution on parole, while serving a sentence in such institution; and any patient of the Central State Hospital, Evansville State Hospital, Madison State Hospital, Logansport State Hospital, Richmond State Hospital, Fort Wayne State School, Muscatatuck Colony, Indiana Village for Epileptics, who shall die, or who shall have been discharged from such institution; and any student of the State School for the Deaf, Indiana School for the Blind who shall die, or who shall have graduated from such institution, shall have any money to his credit, on the books of such institution, at the time of his death, escape, discharge or graduation, and if there be no known heirs of such deceased, escaped, discharged inmate or patient, or graduated student, such money shall be kept intact, to the account of such deceased, escaped, discharged...
inmate or patient, or graduated student, or of his unknown heirs, for a period of two (2) years from the date of his death, escape, discharge or graduation, and if, at the expiration of such period of two (2) years, no heir shall appear to claim such money or part thereof, such money, or any unclaimed part thereof, shall be transferred to the recreation fund of such institution and shall be expended by the board of trustees in the purchase of books and periodicals for and in maintaining the library, or in such other recreational activities, as in the judgment of the board of trustees, will be beneficial to the inmates, patients or students of the institution: Provided, however, That all money credited on the books of such institution to the account of any inmate, patient or student shall be paid to him at the time of his discharge or graduation: Provided, further, That no money shall be transferred to the recreation fund of any institution if such inmate, patient or student is indebted to the state of Indiana for maintenance by such institution, then any money credited on the books of such institution to the account of any inmate, patient or student shall be applied against any indebtedness for maintenance, and the balance, if any, shall be transferred to the recreation fund.”

I have set forth the foregoing statute providing for the transfer of funds to a recreation fund, though, in my opinion, there is some doubt as to the validity of said statute.

Briefly, the statute provides, among other things, that when a prisoner of a state penal institution dies leaving money in the hands of such institution, and that if within a period of two years after such death, no heir appears to claim such money, then any claims of the State of Indiana against said decedent for maintenance by such institution shall be deducted and the balance of said fund shall be paid into a recreation fund of the institution and used for the benefit of the other prisoners.

1. It is seen at once that the statute makes no provision for giving notice to any prospective heirs at law, or claimants against said funds. Further, the statute makes no provision for the proof of heirship, the proof of claims, the allowance or disallowance of same, and the payment of claims. The
statute provides an arbitrary proceeding for the appropriation of decedent's estates without accounting to any court and without any court's approval. The statute makes no limitation on the size of the estate that may be appropriated when no heirs appear to claim the estate.

In my opinion the statute may offend against Section 1 of the Fourteenth Amendment of the United States Constitution for the foregoing reasons. We quote the following:

"* * * Due process requires notice in some proper form and an opportunity to be heard before some tribunal, not necessarily a court or before a jury. * * *"


"Due process of law; as used in this amendment, (14th) means that there shall be a regular course of proceeding and that notice of claims shall be given, and interested parties given an opportunity to appear and assert their rights. The essential elements of due process of law are notice and opportunity to defend."


We note the following from Cunnius v. Reading School District, 198 U. S. 458, 476-477:

"* * * Let it be conceded, as we think it must be, that the creation by a state law of an arbitrary and unreasonable presumption of death resulting from absence for a brief period, would be a want of due process of law, and therefore repugnant to the Fourteenth Amendment. Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the Fourteenth Amendment. Again, let it be conceded that if a state law, in providing for the administration of the estate of an absentee, contained no adequate safeguards concerning property, and amounted therefore simply to authorizing the transfer of the property of the absentee to others, that
such a law would be repugnant to the Fourteenth Amendment. * * *"

2. The statute may further offend against Section 2 of Article 8 of the Constitution of Indiana by diverting escheated estate funds away from the Common School Fund. The Common School Fund is a fund established by the Constitution. It provides that:

"The Common School Fund shall consist of (among other things)

"* * *

"All lands and other estates which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

"* * *"

The General Assembly, in aid of this constitutional provision, provided (Burns Statutes, 6-2349) that:

"The estate of a person dying intestate, without kindred capable of inheriting, shall escheat to the state, and shall be applied to the support of common schools, in the manner provided by law."

In my opinion, upon the death of a prisoner, dying intestate and without known heirs or kindred entitled to his estate, the estate or the surplus remaining after the expense of administration and proper claims have been paid, escheats immediately to the State to be held in trust for the benefit of the Common School Fund. The smallness of the estate does not alter its status; it still is an escheat to the State to be held for the Common School Fund.

It is not difficult to see the situation that the Legislature was seeking to remedy when it enacted this legislation in 1931, as amended in 1937. No doubt a considerable amount of money had accumulated in the hands of State penal institutions and that much of it was a collection of small estates or funds. If an estate amounted to but a few dollars, an administration on such estate would exceed the value of the estate. Hence the Legislature was seeking a means by which the penal institu-
tion might pay out such estate or funds and be relieved of further responsibility for their keeping. But I question the power of the Legislature to divert such estates or funds after they had escheated to the State for the Common School Fund.

Attention is called to the opinion in Donaldson v. State \textit{ex rel.} Honan (1914), 182 Ind. 615.

The Legislature had passed an Act in the year 1903 which provided that escheated lands in Monroe and Lawrence Counties would not go into the School Fund but would go to the Trustees of Indiana University for certain educational purposes.

The Court said:

"* * * It can scarcely be doubted that under our Constitution, and laws enacted in pursuance thereof, the land in controversy escheated to the State of Indiana, and vested in the State, \textit{on the death} of George Donaldson; and, until sale thereof, pursuant to § 3004 Burns 1914, \textit{supra}, the State held and holds the title, in trust, for the benefit of the common-school fund, State, \textit{ex rel.} v. Meyer (1878), 63 Ind. 33."

Again:

"* * * We perceive no sufficient reason for excluding from sale, escheated lands in Lawrence and Monroe counties, and thereby preventing the proceeds of their sale from incorporation in the common-school fund of Indiana, and consequently the act in question must be held invalid because in conflict with Art. 4, § 22 of our Constitution."

Therefore, in view of the foregoing, it is my opinion that payments of escheated estates made to a recreation fund in accordance with Burns Statutes, Section 13-115 are of questionable validity.

Chapter 124, Acts of 1947, Burns Indiana Statutes, Section 6-1516—1524, is an enactment more in accord with the constitutional provision relative to escheated estates. It provides that small estates or funds less than $500.00 may be paid to the proper Clerk of the Circuit Court and administered by the Court without the costs of a regular administration.
Thus, under the 1947 Act, small estates may be administered without undue loss and the surplus may escheat to the State for the benefit of the Common School Fund. And if an estate exceeds $500.00, a regular administration may be had by an appointed administrator with a fair expectation that the estate may be sufficient to meet the cost of administration. In conclusion, it is my opinion, that escheated estates, of whatever size or amount, should be channeled into the Common School Fund as intended by the Constitution in the manner provided by Chapter 124, Acts of 1947.

OFFICIAL OPINION NO. 20
March 24, 1950.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your request of March 11, 1950, for an official opinion which reads as follows:

“In connection with the distribution to cities and towns or revenues of the State Motor Vehicle Highway Account, Section 36-2819 Burns 1949 Replacement provides in part as follows:

“All funds allocated to cities and towns from (the) motor vehicle highway account shall be used by said cities and towns for the construction, reconstruction, repair and maintenance of all their highways, as herein defined, and including also, any curbs; the purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices; the payment of any part of the cost of traffic policing and traffic safety; the painting of structures, objects and surfaces in highways for purposes of safety and traffic regulations; the oiling, sprin-