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OFFICIAL OPINION NO. 19

September 25, 1975

Honorable Jack L. New  
Treasurer, State of Indiana  
Room 242 State House  
Indianapolis, Indiana 46204

Dear Mr. New:

This is in response to your request for my official opinion regarding the following questions:

- "1. Are warrants of the State of Indiana, and checks or warrants of political subdivisions of the State subject to the provisions of IC 1971, 32-9-1-1 to 32-9-1-45 after a period of two years? (Sec. 4-10-10-5 and 19-11-3-5)
- "2. If your answer to (1) is 'yes,' which of the following checks or warrants are included in the definition of 'intangible personal property'?
  - a. Payroll warrants or checks;
  - b. Warrants for materials, supplies, etc. to vendors;
  - c. Refunds;
  - d. Warrants causing credit balances on accounts (hospital-patient, public utility-customer);
  - e. Meter deposit refunds;
  - f. Claims for damages against the State or other political subdivisions.
- "3. If your answer to (1) is 'yes,' must the checks or warrants be receipted to a special holding account (4-10-10-5) by the State, or to the fund from which they came, or the general fund of the political subdivision (19-11-3-5) for a period of five years?

Or, in the absence of legislation, may such checks or warrants be receipted to a 'presumed aban-

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doned property fund' for the additional five-year period, and then be sent to the Attorney General, pursuant to provisions of IC 1971, Section 32-9-1-1 to 32-9-1-45?"

### ANALYSIS

The Indiana Code of 1971, Sections 4-10-10-1 to 4-10-10-10 (Acts 1957, Ch. 117) and Code Sections 19-11-3-1 to 19-11-3-6 (Acts 1959, Ch. 192) (the Cancellation Acts) provide for the cancellation of warrants and checks issued from or drawn on state and municipal funds, respectively, which are outstanding and unpaid for a period of two years. Both statutes provide that after seven years, the holder of the original warrant or check loses all right to claim the money. During the five-year period between the cancellation of a warrant or check and the termination of the owner's right to make a claim, a state agency, pursuant to Code Section 4-10-10-5, must receipt the warrant to a special holding account while a municipal agency, pursuant to Code Section 19-11-3-5, must deposit the check into the fund from which it came. Under both statutes, the unclaimed property ultimately is credited to the fund from which it was taken.

In 1967, the Indiana General Assembly enacted the Uniform Disposition of Unclaimed Property Act (UPA), Code Sections 32-9-1-1 to 32-9-1-45 to protect and preserve the "property rights and interests of absent, incapacitated, or missing owners of property, or those claiming by, through or under them." Code Section 32-9-1-34. Section 10 of the Act, Code Section 32-9-1-10, expressly provides that all intangible personal property held by the State of Indiana or any of its political subdivisions that has remained unclaimed by the owner for more than seven years is presumed abandoned. Code Section 32-9-1-17 requires every holder of property presumed to be abandoned to pay or deliver such property to the Attorney General.

The Cancellation Acts, *supra*, thus differ from the UPA in three important respects. First, whereas these statutes require the governmental agency holding the warrant or check to can-

cel it and deposit it prior to the end of a seven-year period, the UPA contains *no* similar provisions requiring a specific disposition of unclaimed property prior to the end of the seven-year period. Second, whereas the Cancellation Acts provide that, after seven years, the owner loses all right to claim the property, Section 26 of the UPA, Code Section 32-9-1-26, provides the following:

“Any person claiming an interest in any property paid or delivered to the attorney-general under this act [32-9-1-1—32-9-1-45] may file a claim thereto or to the proceeds from the sale thereof on a form prescribed by the attorney-general together with such reasonable proofs as the attorney-general may specify by rule. A claim may be filed at any time within twenty-five [25] years after the date on which the property was first presumed abandoned pursuant to the terms of this act, *notwithstanding the expiration of any other period of time specified by statute or court order* during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property.” (My emphasis.)

Third, whereas the Cancellation Acts provide that the property should be returned to the fund from which it was taken, the UPA provides that property presumed to be abandoned ultimately shall be deposited in the common school fund. Your questions in essence seek an opinion concerning the effect of these differing enactments.

The UPA is the latest and, therefore, the controlling expression of the Indiana General Assembly on the subject of unclaimed property held by a governmental unit. As noted already, intangible personal property held by state government and its political subdivisions is included expressly within the scope of the UPA. Consequently, property held by a governmental unit is subject to the claim of its owner for the 25-year period allowed by Code Section 32-9-1-26; and such property, if not claimed, must be delivered to the Attorney General and ultimately paid into the common school fund. The conflicting provisions of the Cancellation Acts

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which purport to abolish that claim after seven years and to require the property to be returned to the fund from which it was taken accordingly are superseded.

As already noted, however, the UPA is silent with respect to what disposition should be made of property prior to the end of the seven-year period. Furthermore, those provisions in the Cancellation Acts which cancel a warrant or check outstanding for a period of two years do not conflict with the UPA and accordingly can be given effect. But the further provisions that, after cancelling a warrant or check, the money should be deposited in a special holding account or the general fund conflict with the apparent intent of the General Assembly that the money should be deposited in the fund to which it ultimately will be credited. Furthermore, it serves no useful purpose to pay the money into a fund which is not the ultimate recipient of those funds. Rather, it appears to be appropriate to transfer the moneys covering such warrant or check to the Attorney General's "Property Custody Fund" as provided in Code Section 32-9-1-24. Thereafter, such property is subject to claim and to presumption of abandonment as other property held in the Property Custody Fund.

Finally, in answer to your question as to which specified items are included within the definition of "intangible personal property" under the UPA, it is my opinion that all valid checks and warrants, including each of those enumerated in your second question, are included in the UPA definition of "intangible personal property" as money and "all other liquidated choses in action of whatsoever kind or character." Code Section 32-9-1-3(g).

## CONCLUSION

It is, therefore, my Official Opinion that the Uniform Disposition of Unclaimed Property Act supersedes those earlier sections of the Indiana Code dealing with the disposition of unclaimed warrants or checks held by the state (Code Sections 4-10-10-1, *et seq.*) and local (Code Sections 19-11-3-1, *et seq.*) governments. The UPA, however, does not supersede those provisions of the earlier acts which pertain to the cancella-

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tion of warrants and checks outstanding at the end of two years. But the money resulting from those cancellations should be deposited to the credit of the Attorney General's Property Custody Fund established by the UPA in the State Treasury.

Payroll warrants and checks; warrants for materials, supplies, etc., to vendors; refunds; warrants causing credit balances on accounts (hospital-patient, public utility-consumer); meter deposit refunds; claims for damages against the state or other political subdivisions are all included within the UPA definition of intangible personal property and thus are all subject to the provisions noted here.