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FUNDS: UNCLAIMED PARTITION SALE PROCEEDS—UNCLAIMED MONEY—§§2335.35, 117.20 R.C.—RECLAMATION AFTER STATUTE OF LIMITATIONS HAS RUN—§2309.14 R.C.—GENERAL FUND OF COUNTY; APPROPRIATION.

SYLLABUS:

1. Money received by the sheriff in partition proceedings and paid by him to the county treasurer as unclaimed money or public money in accordance with the provisions of Section 2335.35, Revised Code, or Section 117.20, Revised Code, is subject to reclamation by the lawful owner or his legal representative.

2. The county commissioners, county auditor, and county treasurer are authorized to take appropriate action to pay such money from the county general fund to the legal representative of a presumed decedent who was the lawful owner of said funds, even though the statute of limitations set forth in Section 2309.14, Revised Code, might possibly defeat a legal action for recovery of said funds.

Columbus, Ohio, March 3, 1959

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

Your request for my opinion is as follows:

“On September 19, 1946 an entry was filed in a partition case then pending in Warren County Common Pleas Court under the terms of which the Warren County Sheriff was directed to pay to one Harris Harshbarger, a part owner of the real estate, the sum of \$3132.98. Harshbarger had been missing for a number of years at that time and could not be located by the Sheriff. Thereafter, on February 15, 1949 Harshbarger’s share of the money was paid to the County Treasurer by the Sheriff. Although it was supposed to have been deposited in the Unclaimed Moneys Fund, it was immediately placed in the county general fund. Recently the next of kin of Harris Harshbarger has instituted an action in Warren County Probate Court under the presumed decedent’s act to have Harris Harshbarger declared legally dead. In her capacity as Administratrix of the estate of Harris Harshbarger, deceased, said next of kin has made claim against Warren County for a recovery of the money due the estate.

“The question has arisen as to whether or not the claim is barred by Section 2305.14 Ohio Revised Code setting forth a ten year statute of limitations. The auditor and treasurer have

requested my advice, and I am in doubt as to whether or not Section 2305.14 applies to this particular situation particularly in view of the fact that the owner of the money, who could conceivably be alive, was in a sense under disability in that he had no knowledge that he was entitled to any money. Additionally, if the statute is applicable, would it commence running against Harshbarger in the absence of a demand and refusal to pay? Also, if the statute is applicable, would the ten years begin at the time the Sheriff was ordered to pay the money to Harshbarger or at the time the money was received in the County General Fund? Your opinion is respectfully requested."

Although your letter does not specifically set forth the fact, I assume that the unclaimed money was paid to the county treasurer by the sheriff in accordance with the provisions of Section 2335.35, Revised Code, formerly Section 3042, General Code, which reads as follows:

"All moneys, fees, costs, debts, and damages, remaining in the hands of the clerk of the court of common pleas or probate judge, and all unclaimed moneys, other than costs, remaining in the hands of the sheriff from the expiration of thirty days from the ending of the time of advertisement as provided by section 2335.34 of the Revised Code, shall be paid by such officer or his successor to the county treasurer, on the order of the county auditor. Each such officer shall indicate each item in his cash-book and docket the disposition made thereof. Upon ceasing to be such officer, each clerk, probate judge, and sheriff shall immediately pay to his successor all money in his hands as such officer."

It is noted that Section 2335.36, Revised Code, formerly Section 3043, General Code, provides that:

"A person entitled to money turned into the county treasury as provided by section 2335.35 of the Revised Code shall, upon demand, receive a warrant for such money from the county auditor, payable to the order of the person named in the list furnished the auditor as provided by section 2335.38 of the Revised Code. Such warrant shall be issued upon the certificate of the clerk of the court of common pleas, probate judge, or sheriff, in office at the time such demand is made."

In Opinion No. 2689, Opinions of the Attorney General for 1934, p. 705, the syllabus is as follows:

"A person entitled to money under the provisions of section 3043, General Code, may receive the same in accordance with the provisions of that section at any time within five years. At the

end of that period, such unclaimed costs should be paid into the general fund of the political subdivision where the money was collected.”

This conclusion was reached because of the provisions of Section 117.10, Revised Code, formerly Section 286, General Code, which reads in pertinent part as follows :

“ ‘Public money’ as used in this section includes all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order, or otherwise, and all public officials are liable therefor. All money received under color of office and not otherwise paid out according to law is due to the political subdivision or taxing district with which the officer is connected and shall be paid into the treasury thereof to the credit of a trust fund, and there retained until claimed by the lawful owner. If not claimed within a period of five years, such money shall revert to the general fund of the political subdivision where collected. * * * ”

This matter was further and fully discussed in Opinion No. 496, Opinions of the Attorney General for 1937, p. 797, the syllabus of which reads :

“1. Moneys received by the Clerk of Courts and Probate Judges for witness fees and deposits (sic) for costs and by the Sheriff in partition proceedings together with all other moneys received or collected under color of office are public moneys and should be disposed of as provided by Section 286, General Code.

2. Sections 3041, 3042 and 3043 and Section 286, General Code, are not repugnant. Section 286, General Code, is a substantial replica of Sections 3041, 3042 and 3043 and is supplemented thereto to the extent that all moneys received or collected under color of office, regardless of their source, are public moneys, shall be paid into the proper treasury, credited to a trust fund and if not claimed in five years, shall be passed to the general fund.

“3. Such procedure does not carry title to unclaimed moneys to the subdivision wherein they are collected and ultimately carried into the general fund. Such money can be pursued into the general fund and recovered by the lawful owner upon the establishment of his right thereto.”

It is noted that in neither of these opinions was the applicability of the ten-year statute of limitations (Section 2305.14, Revised Code) discussed. However, the following statement at page 707 of the 1934 opinion, *supra*, is significant :

“* * * You do not ask and I express no opinion as to the authority of the county commissioners to appropriate any money from the general fund to pay the persons who would have been entitled to these costs within the five-year period.”

In discussing Section 286, General Code, now Section 117.10, Revised Code, the following language is used at page 802 of the 1937 opinion, *supra*:

“* * * The General Assembly did not say in so many words that after the expiration of the five-year limitation such money should escheat to and become the property of the state or political subdivision, and until such specific provision is made, such money remains the property of the lawful claimant, regardless of the fact that five years has elapsed and the money has been paid into the proper treasury to the credit of the General Fund, and that the rightful claimants may pursue the money into the General Fund and reclaim it. In the reclamation of such money, in my opinion, it is not necessary that any fiscal board or body make an appropriation from the General Fund for its satisfaction, although such would be the logical and orderly way to take care of the situation.”

It would appear that the lawful owner, or his legal representative in the instant case, has the right to reclaim the money in question. Your inquiry is as to whether such right can legally be defeated by the provisions of the statute of limitations set forth in Section 2305.14, Revised Code, which is as follows:

“An action for relief not provided for in sections 2305.04 to 2305.13, inclusive, and section 1307.08 of the Revised Code, shall be brought within ten years after the cause thereof accrued. This section does not apply to an action on a judgment rendered in another state or territory.”

I am fully cognizant of the case of *State, ex rel. McLeary, v. Hilty, et al.*, 139 Ohio St., 39, in which the court by a majority of four to three held in a quite similar case that the ten-year statute of limitations was sufficient to bar legal recovery of the claim. The *McLeary* case involved the attempt to recover proceeds of an appropriation case which were unclaimed and had been paid into the county treasury. Since the divided court in the *McLeary* case indicates that the conclusion was not unanimous, it would be problematical as to whether the different facts of the instant case might so distinguish this matter from the *McLeary* case as to result in a court determination that the statute of limitations would not in this case defeat recovery.

However, without expressing an opinion as to whether or not the ten-year statute of limitations (Section 2309.14, Revised Code) would be a successful legal defense to a suit to recover in the instant matter, I call attention to Opinion No. 3467, Opinions of the Attorney General for 1931, p. 1024, the syllabus of which is as follows :

“A claim against a political subdivision, whether sounding in tort or contract, even though it may not be enforceable in a court of law, may be assumed and paid from the public funds of the subdivision as a moral obligation if it be shown that the claim is the outgrowth of circumstances or transactions whereby the public received some benefit, or the claimant suffered some loss or injury, which benefit or injury or loss, as the case may be, would constitute the basis of a strictly legal and enforceable claim against the subdivision, were it not that because of technical rules of law no recovery may be had.”

In accordance with the reasoning of this 1931 opinion, it appears to me that the claim in the instant matter quite properly could be regarded as a moral obligation of the county. It was not paid to the county for services rendered by the county. It did not escheat to the county. It was the money of the presumed decedent. For the county to retain the money would appear to be unjust enrichment.

I conclude, therefore, that the county commissioners, county auditor, and county treasurer may lawfully recognize the claim and proceed with appropriate steps to pay same.

It is my opinion and you are advised :

1. Money received by the sheriff in partition proceedings and paid by him to the county treasurer as unclaimed money or public money in accordance with the provisions of Section 2335.35, Revised Code, or Section 117.20, Revised Code, is subject to reclamation by the lawful owner or his legal representative.

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Respectfully,
MARK McELROY
Attorney General