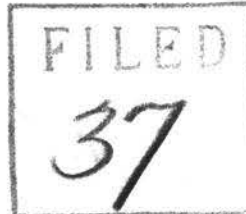


ESCHEATS -) Unclaimed money in hands of sheriff arising from partition
) sales to be paid into State Treasury upon order of the
) circuit court.

December 23, 1949

1/3/50

Honorable Lane Harlan
Prosecuting Attorney
Cooper County
Boonville, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"Re: Section 642.8 R. S. Mo. Ann. 1939

"Our Sheriff has three accounts in his file which are escheat accounts, and all of which accrued before the expiration of his first term in office, at which time he made his final settlement, and is now starting on his second term. He wants to get rid of the money, but under the above section in question the statute provides that the action shall be brought by the attorney-general of the State of Missouri in the name and at the relation of the State of Missouri. Would an interpretation by your office of this statute allow me to bring this action as prosecuting attorney, or would the papers have to be prepared by your office?

"The Sheriff is rather anxious to dispose of this money and any information you can give me regarding the procedure will be greatly appreciated."

You have further informed us that two of such accounts represent unclaimed proceeds arising from the sale of land in partition, and that the third represents the proceeds of the sale of unclaimed or confiscated personal property. We do not find any statute escheating the latter type of money to the state, and, therefore, have disregarded this account in the preparation of the opinion.

You have referred to Section 642.8, Missouri R.S.A. Examination of this section discloses that it appears as part of an act found

Laws of 1947, Volume I, page 297. This entire act is directed toward the escheat of moneys arising by reason of litigation concerning rates, refunds, refunds of premiums, fares and charges collected for services rendered in Missouri or in connection with contracts of insurance. It provides a scheme for the determination of the fact of such escheat, but is limited in its scope to matters such as those enumerated above, and is inapplicable to accounts such as those you have inquired about.

Your attention is directed to Section 620, R. S. Missouri, 1939, which insofar as pertinent to the subject matter of your inquiry reads as follows:

" * * * or, if upon final report of any sheriff to the court, it is shown that the interests in the proceeds of the sale of land in partition of certain parties, who are absent from the state, who are non-residents, who are not known or named in the proceedings, or who, from any cause, are not in a situation to receive the same, are in his hands unpaid and unclaimed; * * * in each and every such instance such real and personal estate shall escheat and vest in the state, subject to and in accordance with the provisions of this chapter."

The "court" referred to in the above quoted portion of the statute necessarily refers to the circuit court as jurisdiction of suits in partition is vested in such court under the provisions of Article II of Chapter 8, R. S. Missouri, 1939. Included therein are Sections 1753 and 1754, respectively, providing for the report by the sheriff of the sale in partition and the direction by the court to the sheriff to distribute the proceeds to the parties entitled thereto in accordance with their respective interests.

Section 621, R. S. Missouri, 1939, reads as follows:

"Within one year after the final settlement of any executor or administrator, assignee, sheriff or receiver, all moneys in his hands unpaid or unclaimed, as provided in section 620, shall, upon the order of the court in which such settlement is made, be paid into the state treasury. And the state treasurer shall issue to him a duplicate receipt therefor, one of which shall be filed with the

state auditor, who shall credit him with the amount thereof and charge the state treasurer therewith. All such moneys so received into the state treasury shall be credited into a fund, to be known and designated as 'escheats.'"

Considering this latter statute in connection with those previously quoted, it seems that the procedure to be followed by the sheriff upon ascertaining that the rightful claimants to the proceeds of a sale in partition are unknown, unavailable, or have not made claim to their share of such proceeds is to inform the circuit court of such fact. Thereupon, such court will enter the order mentioned in Section 621, R. S. Missouri, 1939, requiring the payment of such portion of the proceeds into the State Treasury. The receipt of the State Treasurer is, under the statute mentioned, a complete discharge of the sheriff with respect to such funds. This is necessary inasmuch as Section 1751, R. S. Missouri, 1939, renders the sheriff and his sureties liable upon his official bond for all moneys collected upon such sales being made.


CONCLUSION.

In the premises we are of the opinion that upon determination being made by a sheriff of the nonresidence or failure to claim their share of the proceeds of a sale in partition by the parties rightfully entitled thereto, as determined by the judgment of the court in the original partition action, such sheriff should thereupon inform the circuit court of such facts. Thereafter, upon the order of the circuit court, such sheriff may pay such money into the State Treasury and the receipt of the State Treasurer therefor will serve as a complete discharge of the liability of the sheriff under his official bond to account for such money.

Respectfully submitted,

APPROVED:

WILL F. BERRY, JR.
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J. E. TAYLOR
Attorney General 

WFB/feh