

**LETTER OPINION
2002-L-37**

June 27, 2002

Mr. Nevin Van de Streek
Minot City Attorney
PO Box 1697
Minot, ND 58702-1697

Dear Mr. Van de Streek:

Thank you for your letter inquiring about the state's interest in \$3,000.00 in currency found by a private citizen and turned in to the Minot Police Department. It is my opinion that the money should be submitted to the Unclaimed Property Division of the North Dakota State Land Department, and that the finder is entitled to a reasonable reward.

Under common law, the finder of lost or abandoned property has a claim superior to that of anyone except the true owner. E.g., In re Funds in the Possession of Conemaugh Township Supervisors, 753 A.2d 788, 790-791 (Pa. 2000). Courts have also held that the finder who appropriated found property to his own possession acquired absolute title thereto, and that absent a statute providing otherwise, a state has no right to found property as against the finder. Campbell v. Cochran, 416 A.2d 211, 222 (Del. Super. Ct. 1980).

However, North Dakota has enacted statutes governing the rights of finders, and these statutes, when read together with other statutes governing property ownership and unclaimed property, support the conclusion that the currency should become the property of the state.¹ Section 47-01-10, N.D.C.C., provides that "[t]he state is the owner of all property . . . of which there is no other owner." While it is unclear under what circumstances there is "no other owner," this situation, in which there may have been an owner, but the owner did not come forward to claim the property or can no longer be identified, seems to fall within the statute. Sections 60-01-34 through 60-01-42, N.D.C.C., address the rights and responsibilities of finders. Section 60-01-34, N.D.C.C., provides that "[o]ne who finds a thing lost is not bound to take charge of it but, if the person does so, the person is thenceforward a depositary for the owner with the rights and obligations of a depositary for hire." This is distinguishable from granting the finder rights in property as an owner, as was held in the above cases.

¹ "In this state there is no common law in any case where the law is declared by the code." N.D.C.C. § 1-01-06.

While the lost and found currency in this matter may seem distinguishable from typical unclaimed or abandoned property, there are statutory grounds for characterizing it as unclaimed property. Section 47-30.1-01(9), N.D.C.C., includes "moneys" in its definition of "intangible property." Section 47-30.1-13, N.D.C.C., provides, in relevant part:

Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

In this case, while the owner is unknown, the Minot Police Department has been holding the currency for the owner. Because currency is always payable or distributable, the three-year claim period runs from the time the public authority obtained the property and began holding it for the owner. I understand that the Unclaimed Property Division occasionally acquires property for which the owner is unknown. In those instances, because there is no name to publish and the owner cannot be identified or located, the property will likely stay in the common schools trust, although the owner could file a claim for the money with the Unclaimed Property Administrator pursuant to N.D.C.C. § 47-30.1-24.

While the money qualifies as unclaimed property, the finder is entitled to a reward. N.D.C.C. § 60-01-37 provides that the finder is entitled to a "reasonable reward" for keeping the property. Because the statute does not define "reasonable reward," that determination is left to the discretion of the Unclaimed Property Administrator.

I trust this information is helpful. Please let me know if I can be of further assistance.

Sincerely,

Wayne Stenehjem
Attorney General

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