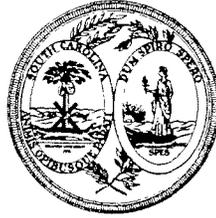


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 6, 1998

The Honorable Johnny Mack Brown
Sheriff, Greenville County
4 McGee Street
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You reference a 1994 murder investigation. You state the following by way of background:

[d]uring a search of the victim's motel room, \$3,418.94, in cash, was found and placed into our property and evidence room. Several individuals were eventually charged and convicted of the murder. None of the defendants ever claimed the money.

We believe the cash belonged to the murder victim. Considering the man's background, it was likely obtained through illegal activity. The victim's family resides in a foreign country. No family member has made contact with us to claim the money, nor have we been able to contact them.

Can we dispose of this money as if it were abandoned?
If not, what is the proper way to dispose of it?

Request Letter

Law / Analysis

In an Informal Opinion, dated September 9, 1997, I addressed the analogous situation where cash money which had been "lost" was turned in to the police department by the finder. The Opinion first distinguished between "lost," "abandoned," and "mislaid" property as recognized by the common law. It was noted therein that "abandoned property" is "'that to which the owner has voluntarily relinquished all right, title, claim and possession, with the intention of terminating his ownership, but without vesting ownership in any other person, and with the intention of not reclaiming any future rights therein, as by reclaiming future possession or resuming ownership, possession or enjoyment of the property.'" On the other hand, I noted that "lost property" is property in "'which the owner has involuntarily parted with through neglect, carelessness, or inadvertence.'" It was further stated that the key distinction between "lost" and "abandoned" property is that "'(l)ost property is always involuntarily parted with, as opposed to 'abandoned' property which is intentionally and voluntarily discarded.'"

A further distinction was made in the Opinion with respect to "mislaid" property which is deemed to be property which is "'intentionally put into a certain place and later forgotten.'" The Opinion also recognized that South Carolina has adopted the Uniform Unclaimed Property Act, which is codified at S.C. Code Ann. Sec. 27-18-10 et seq. It was stated in the Opinion that "'[t]wenty-two jurisdictions have adopted the Uniform Unclaimed Property Act, which provides a comprehensive scheme regulating the disposition of various categories of deemed abandoned, intangible personal property.'" Moreover, the Opinion noted that under the Act, "intangible property" includes:

monies, checks, drafts, deposits, interest, dividends, and income; credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances; stocks and other intangible ownership interests in business associations, monies deposited to redeem stocks, bonds, coupons and other securities, or to make distribution; amounts due and payable under the terms of insurance policies; and amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental employment insurance, or similar benefits.

We also explained that "[u]nder the Uniform Act, abandonment is presumed after the statutorily mandated period of dormancy expires. The presumption of abandonment is statutory, and, therefore, independent of common-law principles of abandonment."

Finally, the Opinion referenced § 27-21-20, which provides as follows:

(A) If property has been recovered by a sheriff of a county or chief of police of a municipality and ownership is ascertained:

(1) The sheriff or chief of police shall notify the owner no later than ten working days after a recovery that the property has been recovered and may be reclaimed.

(2) An owner of the property must be notified by certified mail that his property has been recovered. The notice must contain a list of the specific items. An owner has sixty calendar days in which to claim the property. The notice also must include a statement that, if the property is not claimed within sixty calendar days, the property will be sold at public auction to the highest bidder.

(B) The sheriff of a county or chief of police of a municipality may sell at public auction any recovered stolen or abandoned property after he has held it for sixty days and declared it abandoned by the jurisdiction. The sheriff or chief of police shall make a diligent effort to ascertain the true owner of the property and at least twice before the sale advertise the property with its full description in a newspaper having general circulation in the county or municipality having jurisdiction of the property and post the advertisement in the sheriff's office or the police department and at the courthouse. At any time after thirty days have elapsed after publication of the second advertisement, the sheriff or chief of police may sell to the highest bidder at a place designated by the sheriff or chief of police the abandoned or recovered stolen property as advertised. The sheriff or chief of police shall turn over all proceeds of the sale to the county or

municipal treasurer who shall pay any debts incurred in holding the sale and then shall place the final proceeds in a special fund.

(C) If after diligent efforts the owner of the property cannot be ascertained or if the property is not reclaimed or sold at public auction, the sheriff of a county or chief of police of a municipality may dispose of any recovered stolen or abandoned property as provided in this subsection.

(1) Property that is not suitable for sale, including, but not limited to, clothing, food, prescription drugs, weapons, household cleaning products, chemicals, or items that appear nonusable, including, but not limited to:

(a) electric components that appear to have been skeletorized, where parts have been removed and are no longer in working order; or

(b) items that have been broken up and only pieces exist may be destroyed by the jurisdiction holding the property.

(2) The sheriff or chief of police may use any property recovered by his jurisdiction if the property is placed on the jurisdiction's inventory as property of the jurisdiction.

(3) The sheriff or chief of police, with the consent of the governing body, may turn over to any organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, items of abandoned or recovered property that may be used for the betterment of that organization. However, the accrued value of the items given to an individual organization as provided above by a sheriff or chief of police shall not exceed a value of one thousand dollars in the respective government entity's fiscal year.

(D) A jurisdiction recovering property pursuant to the provisions of this section shall maintain a permanent record of all property recovered and its disposition.

In analyzing your situation, it is apparent that the money was neither "lost" nor "misplaced." I also presume that no governing forfeiture laws are applicable (such as drug forfeiture). Based upon the facts as you have presented them, assuming no heirs, relatives or family members have yet or will in the foreseeable future come forward to stand in the shoes of the real "owner" of the money (presumably the murder victim), it would thus appear that the money best fits into the category of "abandoned" property. If these assumptions are correct, the principal issue would thus be whether disposition of this money would be governed by the Uniform Unclaimed Property Act (§ 27-18-10 et seq.) or by the statute relating to recovery of abandoned or stolen property by law enforcement agencies (§ 27-21-20). This is a difficult issue because both statutes appear to cover your situation, but with differing dispositions of the money.

In La. Op. Atty. Gen., Op. No. 97-198, the Louisiana Attorney General concluded that \$5,700 in cash seized from a woman in a highway interdiction case where the woman was not convicted on any criminal charges and numerous attempts to locate her proved unavailing should be disposed of pursuant to the Uniform Disposition of Unclaimed Property Act. Apparently, however, Louisiana did not possess a statute similar to § 27-21-20 and thus no statutory conflict appeared to exist.

On the other hand, an opinion of the North Carolina Attorney General appears to have faced just such a statutory conflict as is present here. In an Opinion dated April 14, 1983, the North Carolina Attorney General addressed the issue of whether money seized by a sheriff's department in a drug raid where all persons at the scene denied ownership and where such cash was never used as evidence in a criminal trial was governed by the Uniform Disposition of Unclaimed Property Act or by a statute somewhat similar to our § 27-21-20. The latter North Carolina enactment dealt with disposition of property seized by a law enforcement officer in the "discharge of his duty"

The North Carolina Attorney General concluded that the "law enforcement" statute was controlling over the Uniform Unclaimed Property Disposition Act. Such Opinion stated that

'Where there are two provisions in a statute, one of which is special or particular and the other general, which, if standing alone, would conflict with the particular provision, the special will be taken as intended to constitute an exception

to the general provisions' Davis v. Granite Corp. 259 N.C. 672, 676, 131 S.E.2d 335 (1963); Utilities Commission v. Electric Membership Company, 3 N.C. App. 309, 314, 164 S.E.2d 889 (1968); 12 Strong's N.C. Index, Statutes § 5.8. Although both statutes relate to unclaimed property, Article 2 of Chapter 15 addresses property in the hands of North Carolina law enforcement officers while G.S. 116B-19 addresses property held by any governmental official of any jurisdiction within the United States. Therefore, G.S. 116B-9 can be said to be the general provision and Article 2 of Chapter 15 to be the specific provision. Under the principle stated above the specific provision controls.

If this analysis is deemed to be prevailing in your situation, the only question would then be whether the fact that money is involved here makes any difference in the result. One could argue that it would make little or no sense to put money up for public auction. See Op. Atty. Gen., September 9, 1997, supra. However, it should be noted that, pursuant to Subsection (2) of § 27-21-20, the sheriff "may use any property recovered by his jurisdiction if the property is placed on the jurisdiction's inventory as property of the jurisdiction." Moreover, Subsection (3) provides a mechanism for the sheriff, with the consent of the appropriate governing body, to "turn over to any organization exempt from tax" pursuant to § 501(c)(3) of the Internal Revenue Code, as much as \$1,000 per fiscal year.

Accordingly, my best effort to reconcile these two statutes would be to deem § 27-21-20 to be controlling with respect to your situation. Thus, I would suggest that following this statute would probably be the best way to resolve your problem.

I must caution, however, that no South Carolina case has resolved this issue as yet. Thus, the most cautious way to answer your question is by way of declaratory judgment. If you choose not to opt for that route, I would recommend using § 27-21-20 as the means for disposition of these funds.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

The Honorable Johnny Mack Brown
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With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an