

Escheated Estates—Transfer of Escheated Estates to General Fund—When an Escheated Estate May be Transferred to the General Fund.

Different sections relating to escheated estates reviewed and conclusions given as to when the same may be transferred to the general fund.

March 14th, 1918.

Hon. R. G. Poland,
State Auditor,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following question:

“When may an escheated estate become the property of the state and be transferred to the General Funds?”

Sections 27, 200, 3084, 4836, 4837, 4838, 7356, 7357 and 7358 and 7359 (as amended) Revised Codes of 1907, relate to escheated estates.

The law is settled in this state that the title to property owned by one who died intestate without heirs does not vest immediately in the state. To complete the escheat a proceeding is necessary.

In the case of *In re Pomeroy*, 51 Mont. 119, the Supreme Court in passing upon this question used the following language:

“Under the Codes of 1895 the property owned by one who died without heirs did not vest immediately in the state. To

complete the escheat a proceeding in the nature of an inquest of office was necessary, and then the determination of the court, though in form a decree that the property belonged to the state, operated only to convey a title defeasible for the term of twenty years, and complete upon the expiration of that period if a valid adverse claim was not presented. (Code Civ. Proc. Secs. 2250-2253). And this is the state of the law today. (Rev. Codes, Secs. 7356-7359). Since 1895, property which the state claims as escheated is held for a period of twenty years to await the action of anyone who may be entitled to it."

Resident aliens may take in all cases by succession as citizens; no person capable of succeeding under the provisions of Title VII is precluded from succession by reason of the alienage of any relative; however, no non-resident foreign can take by succession, unless he appears within *five* years after the death of the decedent to whom he claims succession. Sec. 4835.

When succession is not claimed as provided in Sec. 4835, the district court, must direct the Attorney General to reduce the property to his or the possession of the state, or cause the same to be sold and the proceeds deposited in the state treasury for the benefit of such non-resident aliens, to be paid to him, whenever within five years after such deposit satisfactory proof is produced showing that he is entitled to succeed thereto. Sec. 4836.

If no one succeeds to the estate or the proceeds, the property of the decedent devolves and escheats to the state and is placed by the state treasurer to the credit of the general fund.

It therefore follows that property of deceased persons, which might pass by succession to aliens or non-resident foreigners, escheats to the state five years from the time mentioned in Section 4836, which cannot be less than ten years from the date of death of such deceased person.

Section 4837, is the only provision of the laws of this state that provides for the payment of the proceeds of escheated estates into the general fund.

Section 2000, Chapter 76, Laws of the Thirteenth Legislative Assembly, provides, that the principal of the state school fund shall remain irreducible and permanent. "That said fund shall be derived from the following sources, to-wit: * * *, the proceeds of land and other property which revert to the state by escheat and for future; * * *."

I am therefore of the opinion that twenty years from the date of judgment in the proceedings mentioned in Sections 7356 to 7359, both inclusive, proceeds from all escheated estates, except estates mentioned in Section 4835 must be placed to the credit of the permanent school fund.

Respectfully,

S. C. FORD,

Attorney General.