Escheated Estates, Claims For, How Presented and How Allowed.

After an estate which has reached the hands of the state treasurer as an escheat cannot be withdrawn or claims therefor paid, except upon appropriation therefor by the legislature, whether the claimants are citizens or non-resident aliens.

June 16, 1920.

Hon. H. L. Hart,
State Treasurer,
Helena, Mont.

Dear Sir:

By certain communications in reference to the question of escheated estates, you wish to be informed of the proper procedure to be followed in obtaining money from the state treasury by heirs of deceased persons whose estates or the proceeds thereof have escheated or are alleged to have escheated to the state of Montana and are on deposit in your office;

1st. By a person who is a citizen and a resident of the United States at time of the death of the decedent from whom he claims to inherit:

2nd. By a non-resident alien who claims the right of succession within the time allowed by law.

Under our statutes, the subject of escheated estates is involved and its ramifications are complex. Your inquiry touches upon various phases of the question; they relate to (a) the procedure by which an estate may escheat to the state, (b) the time when an escheat may become effective and is completed, (c) the proceedings by which a claim to the estate or its proceeds may be established and the same withdrawn from the treasury and paid to the proper person, (d) the authority of the state treasurer to repay the proceeds to the lawful claimant or person entitled thereto, and (e) the disposition of moneys which have escheated to the state. The entire subject is governed by constitutional and statutory provisions.

A discussion of the foregoing propositions is necessitated in answer to your inquiry for the reason that so far as I have been able to ascertain no fixed or settled practice or procedure has ever been formulated or followed under the statutes at present in force in this state by which estates escheat, and in view of conflicting opinions it has been thought advisable to give careful attention to the matter and to assign reasons for the bases of the opinions expressed.

In reference to the statutes of our state bearing upon the subject, it is noteworthy to observe that practically all of the sections of our Code have been adopted from California, or that they now are in the same form as those which at one time or another have been controlling in that state, but that the California sections have been amended in various respects to conform to a more wise, just and expedient method of handling escheated estates. In view of this fact, it might be well

to state that it would be appropriate to propose to some subsequent session of the legislature such legislation as would clarify the procedure relating thereto and which would prevent a repetition of wrongs that have occurred in the past and wrongs which will inevitably occur in the future under the present system.

The statutes relating to the question of escheated estates and adopted from time to time during the legislative history of Montana are as follows:

Sections 27, 200, 3084, 4820, 4835, 4836, 4837, 4837, 7356, 7537, 7358, and 7359, Revised Codes of 1907, to which there are no amendments except as to 7359, which was amended by the legislature in 1913, for the purpose of providing claimants to estates which had escheated or alleged to have escheated prior to 1895 a means to recover the same from the state. These respective provisions made their appearance in the various codes of this state at the folowing periods:

Sections 3084, 4820, 4835, 4836, 4837, and 4838 appear for the first time in the Compiled Statutes of 1887 as sections 344, 535, 553, 554, 555, and 556 respectively, 2nd division, and are the only statutes in the Codes of 1887 relating to the question of escheated estates; they appear in the Annotated Codes of 1895 with slight immaterial modifications, and are then brought forward in the compilation of the state laws in 1907. Sections 27, 200, 7536, 7358, and 7359 appear for the first time in the Codes of 1895 as sections 61, 463, 2250, 2251, 2252, and 2253 respectively.

These respective code provisions are governed by that portion of section 2 of Article XI of the Constitution, which reads as follows:

> "The public school fund of the state shall consist of ——— all estates, or distributive shares of estates that may escheat to the state."

There are no other or further statutory of constitutional provisions bearing directly upon the subject.

In the first place, how may a person who is a citizen or resident of the United States at the time of the death of the decedent from whom he claims recover property which has or is alleged to have escheated to the state to which he asserts that he is entitled in accordance with the laws of succession?

A reading of sections 7356-7359 unquestionably discloses that the legislature intended to provide machinery whereby property which the state claims as an escheat may be recovered by the party lawfully entitled to the same, but in view of the language employed a doubt may arise as to whether the provisions of this title are restricted in their application and only give the claimant relief when the property so escheated is real estate. Hence the preliminary question is presented as to whether the legislature intended that the proceeding should embrace personalty as well as realty.

> Section 7356 provides: "When the Attorney General is informed that any real estate has escheated to this state———"

> Section 7359 ,amended) provides: Within twenty years after judgment in any proceeding had under this Title, a preson ———"

In the first place, the view must be taken that the words "has escheated" do not mean that where property the title to which has already passed to the state this certain proceeding is to be instituted, but that the proceedings provided for therein must be followed in order that property may escheat to the state; and this is the view that was adopted by the California courts prior to, and which prevailed at, the time these statutes were adopted from that state by Montana.

In the second place, it is true that the foregoing statutes specifically mention realty and refer solely to that class of property. However, Section 200 of the Political Code, which was adopted at the same time as sections 7356-7359, must be construed in connection with these provisions, and among other things it provides:

> "When any real or personal property is discovered, which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated, for the recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in Title VIII., part III., code of civil procedure."

At a time when the California statutes upon this particlar subject were the same as those now prevailing in this state, the Supreme Court of that state in construing an identical question, used the following language in the case of In re Miner's Estate, 76 Pac. 968, (Cal.);

> "The provision of the Code of Civil Procedure in reference to escheats, taken by itself, might imply, from the language used, that such action was only necessary where real estate was involved, but the provisions of the various Codes bearing upon the same subject matter must be construed in pari materia. Pol. Code, Sec. 4480. Under this rule, and considering the various provisions of the several codes bearing upon the subject, it seems very clear that, in every case of a failure of the decedent, an action of escheat becomes necessary to vest the title in the state, whether the estate so escheated consists of real or personal property."

In confirmation of this view or opinion, it is interesting to note that the legislature of California so as to remove any doubt that may have theretofore existed in that state as to whether the provisions of those sections of their code, which are analogous to sections 7356-7359 of our code in their material features, applied alike to realty and personalty, amended those provisions so as to include both realty and personalty, and changed the words "real estate" to "property."

If it is held that the word real estate in this instance does not apply to and include personalty, the legal effect would be to revert back to the situation which prevailed at the time the Compiled Statutes of 1887 were in force and effect, which would mean nothing more or less than that personal property would would pass eo instanti to the

state, and that no proceeding would be necessary in order to vest title in the state, which of course is contrary to the legislative intention as construed in the case of In re Pomeroy, 151 Pac. 333, 51 Mont. 119, where it is held as follows:

> "Under the Codes of 1895, the title to property owned by one who died intestate 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 feasible 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. 250-2253.) And this is the state of the law to-day. (Rev. Codes, secs. 7356-7359.)"

If then the provisions of sections 7356-7359 would not be applicable on account of the words "real estate" being employed, personalty would escheat without any proceeding being instituted to that effect, and hence no proceeding could be comenced or instituted to recover it by a lafwul claimant, for the very apparent reason that it could not be said that the state had consented that it could be sued for the recovery of property of this class, and for the additional reason that no machinery had been provided by the legislature for the return of such property.

In view of the facts upon which these conclusions are based, it must be said that the provisions of 7356-7359 apply alike to realty and personalty.

The main proposition, as heretofore stated, presents two different aspects for consideration, which relate to (a) the manner in which the money may have reached the state treasury, and (b) the fund from which it is payable.

Prior to the adoption of sections 7356-7359, no proceeding was provided, and without a consideration of those sections, there is no proceeding whereby an estate may escheat to the state, in consequence of which it would follow that if these particular sections were eliminated from the code no proceeding would be necessary in order that the state might become the owner of such personal property as may be claimed to have escheated, for it would pass to the state without the intervention of any kind of an action being prosecuted for that purpose. Therefore do the provisions of Title VIII. of Part III. of the Revised Codes of Civil Procedure provide the only manner in which property may reach the hands of the state treasurer, and would it necessarily follow that before any action or proceeding may be commenced for the recovery of an escheat or an alleged escheat that the judgment provided for by section 7356 must have been rendered, for section 7359 specifically provides:

> "Within twenty years after judgment in any proceeding had under this Title, a person not a party ———" may file his petition, etc.

That is, if money or the proceeds of property has reached the state treasury without the proceeding mentioned, is a lawful claimant precluded from any relief because of the fact that no judgment has been rendered in accordance with the provisions of that title upon which to base the proceeding for the recovery of the property or its proceeds.

To say that such a judgment must first be had before an action for recovery can be commenced, would be to continue in effect a situation which this legislation was intended to relieve, for the mere failure to obtain the judgment provided for would under all circumstances constitute a valid defense against a proceeding to obtain the property or its proceeds by a lawful claimant. Such a construction is not in harmony with the purpose or character of this legislation, for as stated by the Supreme Court it is not the intention of the legislature to deprive any person of the ownership of his property or to foreclose to any lawful claimant any of the avenues whereby he would be entitled to obtain that which the state in "equity and good conscience should pay". These statutes are to be construed in the light of the purpose they were enacted to accomplish, and that is and was to provide a means whereby a person who is the claimant of escheated property may obtain the possession and ownership of the same by a proper proceeding. It is apparent that it would make this legislation a monstrosity to contend that because a proceeding had not been had under the provisions of Title VIII., Part III. of the Code of Civil Procedure, that one could not thereby institute an action to recover property until the state should act and perform a duty which it could not be required to perform. Property which may have been placed in the state treasury, without any action having been instituted to cause it to escheat to the state, in which event the time of limitation would never run, may be recovered by the proceeding outlined in sections 7356-7359.

Of course, where property is in the control of the public administrator, section 3084 of the Revised Codes imposes the duty upon that officer to transmit the proceeds of an escheated estate, or an estate that will escheat to the state, to the state treasurer, if an action has not been commenced under sections 7356-7359. In order to place money or the proceeds of an estate in the state treasury in such a case all that is necessary is that an order be made by the court or judge requiring the transfer thereof to be made; the estate does not thereupon escheat and such an order does not constitute an escheat proceding, but the property is merely held on deposit waiting for the proceeding contemplated by section 7356 to be commenced. In re Miner, 76 Pac. 968, (Cal.). Consequently any money or property that has been transfered to the state treasury in accordance with section 3084 has not and will not escheat to the state until the proper proceeding has been prosecuted to a conclusion, and as a result the limitation of time in which a claimant may appear is not running against these estates, and they are merely being held for such action as may later be taken to cause them to escheat, whereafter they may be disposed of in accordance with the constitutional restriction.

Ancillary to the manner in which an estate may escheat is the question of the time element; under sections 3084, 4835, 4836 and 4837 it is necessary to determine whether or not the property or estate must remain in the hands of the administrator until the expiration of five or ten years, whichever the case may be, from and after the death of the decedent before it can be transferred to the state treasury, or before a proceeding can be commenced to cause it to escheat to the state. These sections must be construed together, and effect must be given to all of them in order to ascertain the meaning to be derived from them and to obtain the legislative intent. Suppose that under the Compiled Statutes of 1887, a person died intestate without heirs, and after administering upon the estate the public administrator has considerable funds still within his possession belonging to the estate. Would he have to wait until after the lapse of the five or ten year period before he could obey the injunction of section 344, now section 3084; certainly not. Though under the statutory provisions in force at that time, an estate passes at once to the state upon the failure of succession, the only purpose of sections 553 et seq. was to preserve to non-resident aliens the privilege of presenting their claims within the period prescribed therein after the death of the decedent, if it was to be preserved at all. These statutes having been carried forward, it is to be presumed that they will have the same effect under the present statutes as at the time of their first appearance in the codes of this state or territory. If the money then may be transferred to the state treasury at any time after the death of the decedent, when may the proceeding be instituted that is provided for by sections 7356-7359?

Section 4835 has received a construction from the California courts in reference to the time in which a proceeding may be commenced to escheat property, which in an obiter dicta expression has been followed in this state. State vs. District Court, 54 Pac. 121, 25 Mont. 355, and it is there held that a proceeding to escheat property may not in any event be commenced within five years after the death of the decedent. The California court, following the earlier decision of State v. Smith, 70 Cal. 156, 12 Pac. 121, said in the case of People v. Roach, 18 Pac. 407:

> "Is it possible in law or in fact for a party to know that there are no heirs so soon after the death of the intestate? —— Alien heirs have five years after descent case to appear and claim their right by succession. Can any one affirm within that time that there are no heirs? Does not the affirmation of such a proposition presuppose acquaintance with every non-resident alien and his genealogy? The averment is clearly one of fact, imposible in law, and which cannot be admitted by demurrer. —— The codes of this state, like all other laws, proceed upon the theory that things have happened according to the ordinary course of nature and the ordinary habits of life, and it is a presumption of law that every intestate has left some one on earth entitle to claim as his heir, however remote. —— We think that the information filed by the attorney general is premature."

The reason for the holding of the case is that it is a presumption which must be indulged in that some person, though no heirs are known, will appear during the five years period to claim the estate as an heir of the decedent, and consequently any action commenced prior to that time is premature.

In this connection the fact must not be overlooked that the statutes of California have an additional statute which does not appear in the Montana codes and which seem to function as a deciding factor in the decision of the court. It is as follows:

> "If a non-resident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case, is disposed of as provided in Title 8, pt. 3, Code of Civil Procedure."

The latter part of that section is significant, and renders it impossible to commence an action to escheat the property prior to the expiration of the five year period under the provisions of title 8, pt. 3 of the code referred to, where there are non-resident alien heirs. In each of the California cases cited, there were non-resident alien heirs, who asserted claims to the property in question within the period of limitation. As stated this section does not appear in the Montana statutes.

The statutes of Idaho are the same as those of Montana in reference to succession, though that state does not have statutes similar to sections 7356-7359. The Supreme Court of that state has held that the limitation in which a non-resident may appear and claim is five years, thought a claimant is given five years after the deposit of the proceeds of an estate in the state treasury in which to offer proof that he is entitled to the same. Connolly vs. Reed, 125 Pac. 213, (Ida.) Consequently non-resident aliens would be barred after the lapse of five years, and loose any rights to take by succession that are given them by statute.

In the case of In re Pomeroy, supra, it is said in the opinion of the court that:

> "Under any and all of these statutes, however, property could not escheat unless the owner died intestate without heirs. (Sec. 535, Sec. Div. Comp. Stats. 1887; sec. 1852, Civ. Code, 1895, Civ. Code, 1895; Sec. 4820, Rev. Codes 1907.)

Those provisions relating to aliens and non-resident aliens have been adopted in derogation of the common law and merely confer a privilege upon such persons, otherwise they could not under any circumstances inherit property in this country, and practically all of the states have such statutes conferring this right. It is plain that there were merely intended to operate in such a manner as to enable persons of foreign citizenship to inherit property, and were not intended to confer a privilege upon non-resident aliens that persons, resident within or citizens of this country, did not and could not enjoy. If it is to be presumed that a person who dies intestate leaves heirs somewhere on earth, why does not the same presumption prevail in behalf of resi-

dents of this country; if it is to be presumed that a decedent leaves heirs, why should they be confined to non-resident aliens, and if this presumption is to be indulged in is it not true that some of these heirs may reside in and be citizens of this country, and therefore a proceeding to escheat an estate could never under any circumstances be commenced because of that presumption, for as stated in In re Pomeroy, supra, an estate cannot escheat even under our present statutes, unless the owner does intestate without heirs. It is idle to presume that there are foreign heirs, and that there are no resident heirs. Of course, as to resident heirs there is no limitation as to the time in which they can appear, or in which an action can be commenced against them, such as that contemplated by sections 7356-7359.

For instance, it might be presumed that these sections as to non-resident foreigners specified no particular time in which a non-resident could appear and present his claim, and then under a like course of reasoning, when could it be said that the time limit had expired or when could the presumption be overcome as to the presence of an heir or heirs. Any proceeding would be premature to escheat the property to the state, if the presumption should prevail.

Therefore the reasoning of this case does not seem to be sustained when the situation which the legislature had in mind at the time it adopted these statutes is analyzed. Again they cannot be given that construction without holding that they appeal or amend sections 7356-7359, for those sections specifically permit the commencement of an action for the recovery of an escheat to the state at any time after the death of the decedent, and hence to say that the time for the commencement of the proceeding provided for must be delayed for a priod of five years would be to amend the provisions of title 8, in two respects; 1st, it would extend the time for commencing the action, and, 2nd, it would permit property from escheating to the state for a period of twenty-five years, instead of twenty years as provided. The conflict between these statutes is not irreconcilable, and in the next place when all can be given effect, then that construction which continues them in effect must be adopted.

In ascertaining the meaning that should be given to sections 4835-4838 in the present code, it is pertinent to inquire as to their operation under the Compiled Statutes of 1887, when as stated heretofore they, together with section 3084, then section 344, were the only statutes relating to escheated estates.

Under those statutes no proceedings was necessary to cause property to escheat; title passed eo instanti to the state upon a person dying inestate without heirs. But if in fact there were heirs, it never would or could escheat, in that title vested in them immediately upon the death of the decedent; the escheat was contingent upon that fact.

Therefore under these statutes, and the same holds true to-day so far as the escheat is concerned, a claimant would or might have an indefinite period in which to assert his ownership to the property. The main object of these statutes was to confer a right upon these two classes of persons, viz; aliens and non-resident aliens. These statutes

first made their appearance in California in 1865, when they were adopted by a special act of the legislature, after necessity for their existence was demonstrated so as to enable aliens and non-residents to inherit. If in fact, it is reasoned that every person dies leaving heirs at some place on earth, the presumption would operate as stated heretofore to defeat the purpose of this legislation, because it would apply to resident as well as to non-resident heirs.

Under these statutes, by section 344, or now 3084, property which after due administration was not claimed by any heir, was tranfered to the state treasury.

Since the adoption of the 1887 Codes the only changes which have been made, are those changes provided for by sections 7356-7359, 200 and 27, and so far as the present question is concerned, the only material changes are those made by sections 7356-7359. What is their purpose; they do two things, viz., 1st, provide a means whereby a lawful claimant can recover his property; 2nd, provide a specific period for the appearance of a resident claimant; they were not intended to change or alter the meaning or application of sections 4835-4838, but adopted for the purpose of providing a means whereby claimants may obtain their property in a proper proceeding, as well as a procedure to cause estates to escheat.

At the time of the death of a person, dying intestate without heirs, the fee to his property must vest in someone; if in fact there are no non-resident alien heirs, and still the right to declare an escheat must be suspended for five years, then the state has no right to the property, and there are none to inherit, the fee must under such a construction be held in abeyance; such cannot be the case. Upon the death of such a person, one of two things must occur. His property either vests in his heirs, or in the state with title defeasible during a period of twenty years.

Where there are no known heirs, it must be that the proceedings provided for by sections 7356-7359 may be commenced at any time after the death of the decedent to cause property to escheat to the state, and there can be no limitation, either express or implied, upon the time when such an acion may be instituted.

Of course in those instances where the heir may be known, though a non-resident alien, the proceeding must wait until the lapse of the five years before it may be instituted, because of the fact that the property became vested immediately upon the death of the decedent in such heir and the state would have no right to proceed against it.

In the next place, property in any instance cannot escheat or be alleged to have escheated to the state until after the expiration of a period of twenty years after the death of the decedent. It is apparent that if a non-resident foreigner, who was unknown at the time of the commencement of the action should present his claim at any time after the judgment provided for by section 7356 has been obtained, he is still in ample time to claim and assert his right to the property, and the fact that the judgment has been obtained does not in any event or under any circumstances deprive him of any right that he might have had under sections 4836-4837.

For these reasons, it is believed that the better course of reasoning and the logic of the situation dictates that the holding of the cases referred to are no absolute authority for the position that in all events no action can be commenced within five years, where there are no known non-resident alien heirs.

The next consideration involves the method by which this money or the proceeds of an estate may be paid out of the state treasury in the two separate instances mentioned in the first proposition submitted, viz:

1st. To a resident heir, and,
2nd. To a non-resident alien.

The preliminary question of how money is disposed of by the state treasury, or in what fund it is to be placed by him, first presents itself when it reaches his hands as an alleged escheat.

It is to be observed that the legislature has not seen fit to create a speical fund for the reception of money derived from escheated estates; the state treasurer is without authority to designate and create special funds in the absence of legislative sanction. It is realized that the state may not and in certain instances could not own the money or the proceeds of estates at the time they come into his possession, and that though the general fund may be intended only to contain moneys which are subject to appropriation and over which the state has absolute control, still moneys not otherwise provided for must be placed to the credit of the general fund.

By Section 180 of the Revised Codes, it is provided that "The general fund consists of moneys received into the treasury and not specially appropriated to any other fund."

For authority that the general fund is the proper recepient of funds coming into the possession of the state treasury not otherwise provided for, see the following cases:

State vs. McMillan, 117 Pac. 506 (Nev.);
Robb vs. Knapp, 171 Pac. 1156, (Kan.);
State Comm. Co. vs. Welsh, 129 Pac. 974, (Cal.).

They establish the general proposition, that all moneys coming into the state treasury constitute a part of the general fund, unless the placing thereof in a special fund is specifically authorized by the constitution or by statute.

From the conclusions reached herein the only means whereby an action may be commenced for the recovery of money which is in the possession of the state treasury as an escheat is by the proceedings specified in sections 7356-7359, except where the claimant is a known resident alien at the time the estate was probated. The latter part of section 7359 provides that the court in which the action is pending may order the auditor to draw his warrant on the treasury for the payment of the same, but in the case of In re Pomeroy, supra, this provision has been declared unconstitutional, and for the reason that it violates the constitutional provisions restricting the payment of any money on a claim where there has been no appropriation made by law.

Consequently, the only way in which this can be accomplished is by the proceeding provided, and then no money can be paid until there has been an appropriation by the legislature for the payment of the claim upon which the state treasurer may act and upon which he may rely for authority to pay the claim, for to do otherwise would be to violate the following constitutional and statutory provisions:

> Section 34 of Article V., State Constitution;
> Section 10 of Article XII., State Constitution;
> Subdivision 17 of Section 170, Revised Codes.

In the second place, section 4836 provides that in case a non-resident alien presents his claim within the time specified, the state treasurer and state auditor must pay the claim upon the proper proof being offered to them that the claimant is entitled to succeed thereto; the proof offered must be to their satisfaction. The only manner in which this provision could be made effective would be to hold that that claim must be established in some proceeding before a court of competent jurisdiction to entertain and pass upon the matter, upon the presentation of which these officers would have no other than a ministerial duty to perform in payment of the same, subject to an appropriation therefore.

Otherwise the statute would require these officers to perform a judicial .duty and to determine who might be the lawful claimant to this particular property in accordance with the laws of succession, in contravention of Section 1 of Article IV. of the Constitution, which provides as follows:

> "The powers of the government of this state are divided into three distinct departments; the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted."

Presume for the sake of argument that there are two claimants, or that immediately after the money has been paid to a person who has established a prima facie case that he is entitled to a sum of money that is claimed as an escheated estate, another claimant appears who offers proof of a more substantial character that he is the person who should be entitled to the money. As between these claimants, there is a judicial question, which the state officers would be called upon to decide, and of course one which they are powerless to act upon.

Consequently the language of section 4836 is without effect and the only way in which a non-resident alien can, or the only method prescribed for a non-resident alien to establish his claim is by the proceeding outlined, unless of course the money was deposited in the state treasury for a known non-resident alien and is held there in trust for him, in which his heirship is determined.

The next inquiry which presents itself is as to when property in fact escheats to the state; from the foregoing it can escheat only twenty years after the judgment specified in section 7356 has been obtained, and if that proceeding has never been had, the property never can and never will escheat to the state.

In all instances, what disposition is to be made of money after it in fact escheats to the state; the constitutional provisions as recited hereinbefore require that all money derived from escheated estates shall be deposited in the permanent school fund, and the time that this money is to be credited to the permanent school fund is determined from the date of the judgment of the escheat upon computing the time twenty years thereafter.

In a former opinion rendered by this office in Volume 7 on page 204, Reports of the Attorney General, it is stated that all money from escheated estates, except that derived from those estates mentioned in section 4837 are to be placed to the credit of the school fund, and that those referred to therein are to be credited to the general fund. That opinion is modified to this extent; all money which has finally escheated to the state, must be placed to the credit of the permanent school fund, and the provision of 4737 requiring money to placed to the credit of the general fund is void and unconstitutional.

Consequently you have no authority in any event, either as to resident claimants or non-resident aliens, who were unknown at the time of the death of the decedent from whom they claim succession, to pay claims for property which has escheated to the state or is in the possession of the state as an escheated estate, until a judgment has been obtained therefore in a court of record, and until an appropriation has been made therefore as provided by law, and you are without authority or power to pass on the merits of any claim that is presented to you by persons claiming succession.

Respectfully,

S. C. FORD,

Attorney General.