

Escheated Estate—Real Estate—Procedure.

Real estate should not be sold and the proceeds escheated and turned over to the State Treasurer, but the real estate itself should be escheated.

Dean King, Esq.,
County Attorney,
Kalispell, Montana.

My dear Mr. King:

You have submitted to this office the question whether, where there are no known heirs to the estate so that the same would be subject to escheat, the real property should be sold and the proceeds turned over to the State Treasurer, or whether the real estate itself should be escheated.

You have called attention to the opinion of a former Attorney General, found in Volume 8, at page 448. An examination of that opinion shows that it does not go into the question submitted by you as to whether the property should be sold and the proceeds escheated.

An examination of the various statutes of Montana relating to escheats, discloses no authority to reduce the property to cash prior to the escheat proceeding to be instituted by the Attorney General, as provided in Section 9959 et seq. of the Revised Codes of 1921, and I find no authority elsewhere in the law authorizing a sale of the property, in the hands of an administrator, which would transfer good title to the same, except where such sale becomes necessary for the payment of debts and claims against the estate. It follows that proceedings to declare the estate escheated so as to vest title in the State, as provided by the sections above referred to, are necessary before any sale of the real property thereof can be had.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.