

December 5, 2000

OPINION 00-402

Mr. Lambert C. Boissiere, III
Constable, First City Court
City of New Orleans
421 Loyola Ave., Room 421
New Orleans, LA 70112

Dear Mr. Boissiere:

This office is in receipt of your request for an opinion of the Attorney General in regard to the disposition of funds from garnishment checks. You indicate that the Constable's Office is responsible for collecting and remitting garnishment proceeds to the plaintiff or the U.S. Bankruptcy Court. In performing this task you handle in excess of one million dollars of garnishment proceeds annually. Routinely, plaintiff attorneys or the U.S. Bankruptcy Court hold the checks for months or years before being presented to your bank for payment. While the Legislative Auditors are requesting that you dispose of the property and remove the outstanding checks from your balance sheet, you are concerned about exposure to liability when the checks are eventually presented for payment at your bank. The Unclaimed Property Division for the State of Louisiana has informed you that they were unaware of any other court that has remitted garnishment funds to the Department. Accordingly, you ask for an opinion regarding the disposition of these funds.

This office in Atty. Gen. Op. No. 96-32 had a similar request from the Marshal of the City Court of Lafayette. He held checks for various amounts and for several years in a bank account known as the Marshal's Garnishment Account without a request for payments despite attempts to contact each payee. This office stated, "It is the opinion of this office that the disposition of these funds is governed by the Louisiana Uniform Unclaimed Property Act, R.S. 9:151, et seq. ('LUUPA')."

We attach this earlier opinion which cites and quotes the various statutes under the Uniform Unclaimed Property Act, but caution you to take notice that the Chapter containing R.S. 9:151 to 9:188 was amended and reenacted subsequent to this opinion, being effective July 10, 1997. The sections referred to in the opinion have been renumbered, and the disposition table should be utilized to view the statutes under the current citation.

We note under R.S. 9:154, which sets forth provisions relative to time in which property is presumed abandoned, that Paragraph 10 provides as follows:

Property held by a court, state or other governmental subdivision or agency,

public corporation, or other public authority, one year after the property becomes distributable, except as provided in R.S. 15:86.1 (unclaimed bail bonds).

Additionally, in regard to your inquiry, we find R.S. 9:162(B) is pertinent wherein it provides as follows:

Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers the property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property. The administrator shall be responsible for taking all reasonable measures to deliver to the owner any property paid or delivered to the administrator. (Emphasis added.)

Despite that the Department Head for the Unclaimed Property Division for the State of Louisiana informed you he was not aware of any court remitting garnishment funds to the department, we find, as recognized by this office in an earlier opinion, that this would be the proper procedure whereby the funds are transferred for safekeeping without any change in ownership.

However, it would appear reasonable to notify the Bankruptcy Court that in accordance with state law the funds for the checks previously issued have been deemed abandoned and transferred to the Unclaimed Property Division for safekeeping, and the checks will not be honored by the Court. Moreover, the bankruptcy information should also be transmitted to the Unclaimed Property Division by relating each payment with a copy of the checks that were issued.

We hope this sufficiently answers your inquiry.

Sincerely yours,

RICHARD P. IEYOUB
Attorney General

By: _____
BARBARA B. RUTLEDGE
Assistant Attorney General

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R.S. 9:151

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R.S. 9:162
167-A Unknown Owners

Garnishments funds held by the Court
may be remitted to the Unclaimed
Property Division of the State after
one year,

Mr. Lambert C. Boissiere, III
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Date Received: Nov. 11, 2000
Date Released: December 5, 2000

BARBARA B. RUTLEDGE
Assistant Attorney General