



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

February 1, 1960

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. WW-795

Re: Can the Comptroller and Treasurer clear funds from the Trust Account 923, Insurance Companies Unclaimed Dividends Account, funds with the State Treasurer, to the General Revenue Fund to pay the appropriation to the State Auditor for the cost of audit of the Liquidation Division of the Board of Insurance.

Dear Mr. Calvert:

In your request for an opinion you asked three questions. The first question is as follows:

"Can the Comptroller and Treasurer clear funds from the Trust Account 923, Insurance Companies Unclaimed Dividends Account, funds with the State Treasurer, to the General Revenue Fund to pay the appropriation to the State Auditor for the cost of audit of the Liquidation Division of the Board of Insurance?"

Paragraphs (e) and (f) of Section 8, Article 21.28 of the Insurance Code read as follows:

"(e) Unclaimed Dividends. Unclaimed dividends on approved claims remaining in the receiver's hands after payment of the final dividend shall be delivered to the Board. Such funds shall be deposited by the Board in trust in a special

account to be maintained with the State Treasurer. These unclaimed funds constitute Trust Account 923.7

"(f) Escheat. On receipt of satisfactory written and verified proof of ownership within two (2) years from the date such funds are so deposited with the State Treasurer, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled there-
to drawn on the State Treasurer. Any such money remaining unclaimed with the Board for two (2) years shall automatically become the property of the Board."

The last sentence of paragraph (f) has been underscored for emphasis.

Section 1, Article XIII of the Texas Constitution provides that:

". . . the Legislature shall provide a method . . . for giving effect to escheats; . . ."

It is stated in 17 Tex. Jur. 73, Escheats, Section 3, with reference to the above constitutional provision, that:

"This provision of the constitution does not authorize the legislature to create an escheat--that would be a taking of property without due process of law; it simply directs that provision be made for a method of ascertaining whether or not there has been one."

The early case of Caplen v. Compton, 27 S.W. 24 (Tex. Civ. App., 1893, error ref.) held that:

"The constitution (article 13, § 1) does not authorize the legislature to

Hon. Robert S. Calvert, page 3 (WW-795)

create an escheat; it simply directs it to provide a method for ascertaining whether or not there has been in any case an escheat. No man can be deprived of his property except by due course of law. Bill of Rights, §19."

On the basis of these authorities, it appears that if paragraph (f), Section 8, Article 21.28 of the Insurance Code is construed as ipso facto creating an escheat, then our opinion must be that paragraph (f) is unconstitutional. (See Op. Att. Gen. V-997, p. 3, 4).

On page 1 of Attorney General's Opinion WW-570, it is stated that "discovery", "notice", "inquest of office" and the ultimate investiture in the State of the title and possession of ownerless property are all proper and necessary parts of all escheat laws. As the California court stated in Mathews v. Savings Union Bank & Trust Co., 184 Pac. 418:

"A construction of Section 1273 of the Code of Civil Procedure and Section 15 of the Bank Act by which title to money on deposit would pass to the state absolutely on the expiration of 20 years, without compensation to the owner and without notice and hearing before his property should be taken, would be intolerable."

See also Standard Oil Company v. State of New Jersey, 341 U.S. 428, 433, regarding the requirement of adequate notice.

Paragraph (f) Escheat, Section 8, Article 21.28 of the Insurance Code refers to money belonging to private individuals. It states unequivocally that "Any such money remaining unclaimed with the Board for two (2) years shall automatically become the property of the Board." This sentence is clear and easy to understand, and gives rise to only one interpretation -

Hon. Robert S. Calvert, page 4 (WW-795)

that two years after the money of private individuals has been deposited with the State Treasurer, it automatically escheats to the State. (The Insurance Board is an agency of the State.) No provision is made for notice or for any kind of proceeding to declare the money escheated. This is clearly a taking of private property without due process of law.

It is, therefore, our opinion that the last sentence of paragraph (f) Escheat, Section 8, Article 21.28 of the Insurance Code, underscored above, is unconstitutional. It necessarily follows that our answer to question No. 1 is negative.

In view of this answer to question No. 1, there is no need to answer questions No. 2 and No. 3.

SUMMARY

The Comptroller and Treasurer may not clear funds from Trust Account 923, Insurance Companies Unclaimed Dividends Account, to the General Revenue Fund. The last sentence of paragraph (f) Escheat, Section 8, Article 21.28 of the Insurance Code is unconstitutional as a taking of private property without due course of law.

Very truly yours,

WILL WILSON
Attorney General of Texas

By *Phocion S. Park III*
Phocion S. Park III
Assistant

PSP:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Richard Wells
L. P. Lollar
James H. Rogers
F. C. Jack Goodman
REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore