

**OPINION
70-353**

February 4, 1970 (OPINION)

Mr. Walter R. Fiedler

Director of Institutions

RE: State - Patient or Inmate funds - Disposition

This is in reply to your letter of January 30, 1970, relative to the proper disposition of personal monies or property which may remain in the hands of the various institutions after the discharge or release of a patient or inmate. You note the following statement from Mr. Cameron Clemens, Superintendent of the State Industrial School, relative to a specific matter:

A second concern I have pertains to the savings bonds which have been purchased for students under commitment to the North Dakota Industrial School and are in our possession. These savings bonds are very old, the last ones being issued in 1957. Presently, there are 24 bonds in our possession with a total value of \$775 at maturity date. We have tried diligently over the past several years to locate the students to whom the bonds belong. We have disposed of several bonds in this manner over the past three or four years. Each auditor's report mentions these savings bonds and, in the last report completed this year, it is recommended that the savings bonds be cashed in and put in the 'Student Welfare Fund or turned over to the state.' Our institution does not have a Student Welfare Fund as such and I suspect the bonds would have to be given to the state and disposed of in that manner. I would ask that you make some decision concerning the savings bonds also."

You ask for our opinion as to the proper disposition of these bonds.

Sections 54-23-27 through 54-23-29 of the North Dakota Century Code, as amended, provide for the holding of funds belonging to the patients or inmates by the warden or superintendent and for the return of such property to the patient or inmate when discharged. This evidently was not done in this instance. We are unaware of any statute specifically directing the disposition of such moneys or property insofar as the Industrial School is concerned. We find no basis for law in converting this property money to be placed in a student welfare fund, if such fund existed at the school.

We do, however, note the provisions of section 54-02-02.1 through 54-01-02.3 which provide that any funds in the custody of any court, public officer, or administrative agency which are unclaimed by the lawful owner thereof, if any, within six years after service of notice as therein provided are declared to be unclaimed funds. The statutes provide for the paying of such funds to the general fund of the taxing district represented by such officer or agency or, if the funds are held under the jurisdiction of any court, the funds are to be paid into the general fund of the state or paid over to the local taxing districts to be used for public purposes as the court directs.

We do not know if notice has been given by the Industrial School as provided by statute. However, even if notice has been given there may be some question as to whether the section applies to the Industrial School. It would appear, however, that such statute could apply to the Industrial School. If notice has not been given as required by the statute (section 54-01-02.2) the six year period would not begin to run until such notice had been given, regardless of the length of time the bonds have been held by the School. In addition, if the moneys were to be deposited in the general fund of the State, it could be argued such procedure would be in violation of section 153 of the North Dakota Constitution which provides that the proceeds of all property which fall to the State by escheat shall be part of the fund for the maintenance of the common schools.

In view of the uncertain status of the present statutes governing the disposition of unclaimed property, we would not advise the proceeds of these bonds be placed in either the general fund of the State or in any student welfare fund. We would suggest the bonds be retained until such time as the Legislature might clarify the existing statutes governing unclaimed property and escheats to the State. In this respect, we would note the last Legislative Assembly had under consideration a bill governing the disposal of unclaimed property, but the bill failed to pass.

We are also aware that with regard to United States Bonds, the federal government has regulations and special procedures for cashing same which may or may not permit the officials of the Industrial School to cash the bonds.

HELGI JOHANNESON

Attorney General