

**OPINION
71-313**

October 15, 1971 (OPINION)

Mrs. Bernice Asbridge

State Treasurer

RE: State - Escheat - Postal Savings

This is in response to your letter of September 17, 1971, wherein you make inquiry of this office with regard to chapter 518 of the 1971 North Dakota Session Laws relating to escheat of postal savings system accounts. You submit the following in your letter:

"This office has encountered a problem in regard to the Escheat of Postal Savings System Accounts.

"Senate Bill No. 2181 (chapter 518, 1971 Session Laws) was passed by the 1971 Legislative Session with the Emergency Clause and became effective March 27, 1971.

"The North Dakota law sets a procedure for this office to enforce the collection and deposit of these abandoned accounts, such as:

1. obtaining information on accounts
2. proceedings to adjudicate escheat
3. notice to depositors
4. collection and deposit of funds
5. indemnification of the United States

"As of August 13, 1971, the United States Congress enacted public Law 92-117; copies of which are hereto attached.

"My first question is:

Does the Federal Law take precedence to chapter 518 of the 1971 Session Laws?

"Section 56-01-18,x, relates to the disposition of escheated property. In which it states, 'The proceeds of all property which shall fall to the state by escheat shall be deposited in the permanent fund of the common schools of the state.'

"Senate Bill No. 2181, section 5, relates to 'Collection and Deposits of Funds.' Specifically the last sentence of said section states as follows: 'The payment received shall be deposited in the general fund in the state treasury.'

"My second question is:

Which law is applicable for the deposit of the
aforementioned Escheat fund - the permanent fund of the
common schools or the state general fund?

"I respectfully request your legal opinion in regard to my two
questions as posed."

With initial regard to Public Law No. 92-117, which was passed by the
United States Congress and enacted August 13, 1971, we have reviewed
the same bearing in mind the provisions of chapter 518 of the 1971
North Dakota Session Laws. It would appear that the federal
enactment merely provides the mechanics for distribution of the
unclaimed accounts to the various states. There does not appear to
be any procedure or other requirements imposed upon the individual
states in this regard, providing only for the distribution of and
creation of a retention balance in the created trust. To the extent
that Senate Bill no. 2181, (chapter 518 of 1971 Session Laws)
provides for the procedure to obtain these funds from the Bureau of
Accounts of the United States Treasury Department, it would appear
that the federal enactment supersedes such procedures as the same
distributes the said unclaimed account funds to the various states
without the necessity of implementing the collection procedures as
specified by the state law. We note that the federal enactment
recognizes that the distribution of such funds, held by the federal
governmental agency, is made to states with differing escheat laws;
however, it appears to leave procedural portions of the ultimate
distribution and disposition to the state themselves. In that a
connection, we note the provisions under the purpose clause of the
law as it states as follows:

"* * * That (a) to provide a sharing in the amount of unclaimed
Postal Savings System deposits among the states and other
jurisdictions in which such deposits were made, which is more
equitable and expeditious than may be accomplished under
differing escheat laws, the Secretary of the Treasury is
authorized, * * *." (emphasis supplied)

From the context of that law, it becomes clear that the same is for
the sole purpose of creating a uniform method of making the
distribution from the Secretary of the Treasury to the individual
states. From this standpoint, we fail to see where any of the
provisions of this law are, in reality, in conflict with the laws of
the State of North Dakota, the essence of that law doing that which
the provisions of the North Dakota law seeks to do in obtaining the
disbursement of such funds, leaving the ultimate disposition and
allocation of such funds up to this and other individual states.

In direct reply to your first question then, it would appear that the
federal law would take precedence to chapter 518 of the 1971 Session
Laws as governing any possible procedural conflict in the disposition
of such funds to the State of North Dakota, such funds being in the
custody and under the jurisdiction of an agency of the federal
government.

With regard to your second question, we have difficulty in seeing
where the statutes to which your inquiry refers having any
applicability. We note that section 56-01-18 of the North Dakota

Century Code, as amended, chapter 518 of the 1971 Session Laws, to which you have referred, as well as section 153 of Article IX of the Constitution of north Dakota, all refer to "escheat." In the instance of the federal enactment, we fail to see that the funds represented by the distributive shall constitute "escheat" funds.

With regard to the federal law, we would first note that the subject funds are those funds which are and remain unclaimed by various depositors. The federal law provides for a prorata distribution of a certain portion of such funds to the states in lieu of escheat laws. These funds have not been judicially or as a result of any legislation been declared "escheat" funds or property. As we understand the federal enactment, it is for the purpose of making direct payments to the states of a portion of such unclaimed funds, retaining a balance to honor claims that may arise in the future against such balance, under the various escheat laws of the states. It also appears under section 2 thereof that should the retention balance not be sufficient to pay or otherwise honor claims that may be filed thereunder, an amount necessary to honor such claims is appropriated from general federal funds. We recognize, however that the funds which are distributed under the federal enactment are funds which are subject to "escheat," but the federal enactment apparently contemplates that a certain portion of such funds will not be claimed nor "escheated," for which reason the distribution is made of a portion of the total deposits.

With regard to the application of section 5 of Chapter 518 of the 1971 Session Laws, regarding the collection and deposit of such funds as are contemplated under that provision of state law, we note the same provides as follows:

"COLLECTION AND DEPOSIT OF FUNDS. The state treasurer shall present a copy of each final judgment of escheat to the United States Treasury Department for payment of the principal due and interest computed under regulations of the United States Treasury Department. The payment received shall be deposited in the general fund in the state treasury." (emphasis supplied)

At this point, of course, we must recognize that the funds received under the provisions of the federal enactment are not the same as those contemplated by the above state enactment since there is no judgment of escheat involved in the distribution of the federal government, that being the essence of the state enactment. For this reason, it would appear that the funds so received from the federal agency pursuant to the federal regulation are free from the charge imposed by the state enactment insofar as the deposit of such funds is concerned. This, of course, would appear to imply that the funds so received under the federal enactment are merely to be deposited in the state treasury general fund, not pursuant to the state enactments but rather as incidental income to the state.

For the foregoing reasons, we are of the opinion that the state enactments which you have mentioned in your letter of inquiry are not applicable to the funds which have been received under Public Law 92-117 as enacted by the United States Congress on August 13, 1971, and that funds received thereunder may be deposited in the general

fund of the State of North Dakota. We trust that the foregoing will adequately state our opinion upon matters presented therein.

HELGI JOHANNESON

Attorney General