

LETTER OPINION
72-334

January 13, 1972 (OPINION)

Mr. James E. Sperry

Superintendent

State Historical Society

RE: State - Historical Society - Disposition
of Funds

This is in reply to your letter of December 13, 1971, with regard to disposition of an item of funds on hand.

You indicate that under paragraph III.3 of the past audit of the State Historical Society from July 1, 1970, to June 30, 1971, the recommendation was made that "an Attorney General's opinion should be obtained on the Seventh U. S. Cavalry Custer Memorial Association C. D. No. 3857 for \$4,014.34 to determine whether the State Historical Society has authority to dispose of these funds." You indicate that you are thus requesting an opinion from our office asking if there is any authority under which your office can expend these funds and in any case what procedures should be followed to clear these funds from your books.

You state that as background, you enclose a copy of a letter dated April 14, 1964, to an Assistant Attorney General from a President of the Board of Directors of the State Historical Society. You indicate you find no copy of a reply to that letter in your files.

You indicate further that the money \$3,377.96 was on deposit in a checking account at the First National Bank under the name, Seventh U. S. Cavalry Memorial Association, State Historical Society, until a certificate of deposit was purchased for this amount at the Bank of North Dakota on July 15, 1967. Since that time the sum has grown to \$4,125.50 through the accumulation of interest. You state that the certificate of deposit is issued in the name of State Historical Society, Seventh Cavalry.

Our files do not contain a copy of the letter you enclose from the President of the Board of Directors to an Assistant Attorney General. Our files do, however, contain a copy of a prior letter referred to in that letter, Xerox copy of which is enclosed herewith.

The most definite information apparently on hand is that the C. D. is held in the name of State Historical Society, Seventh Cavalry.

Attempting to summarize the material contained in the correspondence, it would appear that Mr. McAuliff conceived the idea of raising \$75,000.00 to pay for a statute of General Custer. Apparently the Seventh U. S. Cavalry General Custer Memorial Association collected the amount originally on hand and also apparently no particular individual or group is currently active towards completing such

collection of \$75,000.00. Also, it appears that a model of the proposed statute was constructed.

Apparently, the State Treasurer of the State of North Dakota was president or chairman of this association and had custody of these funds. He suffered a heart attack, died and the new State Treasurer apparently found such funds along with other materials in the State Treasurer's Office. The new State Treasurer then turned the funds already collected over to the then Superintendent of the State Historical Society and happened to be the Secretary and Treasurer of the Seventh U. S. Cavalry Custer Memorial Association.

We do not have a great deal of data on this Seventh U. S. Cavalry Custer Memorial Association. We would assume from its name it is in the nature of a society, club or association, perhaps having some of the features of a business partnership, but we have no documentation, books, records, agreements or bylaws of same. Apparently there have been some attempts to revive same, through still existent officers and members, though you give us no current information as to this. Apparently there are or were books in possession of the State Historical Society showing some donors to this fund, though there is no indication that such books are complete. One of the matters mentioned in the copy of letter you enclose indicates that most of the original donations were in the \$1.00 and \$2.00 category.

Looking to the situation as thus described in correspondence and having no further evidentiary material to consider, we cannot see that the state of North Dakota or the North Dakota State Historical Society or Board has any authority or duty with regard to these funds. Apparently, in each instance, same was rightfully held by a state officer, who also was an appropriate officer of the Seventh U. S. Cavalry Custer Memorial Association who died or who became incapacitated. Subsequent to such death or incapacity such fund was apparently merely left in the state office of the deceased individual and his successor in state offices has merely kept a record of same to the current date.

I note a reference to apparently a state "trust" of these funds in part of the correspondence. It is, of course, conceivable that the State Historical Society could be appointed to contract for or otherwise handle a statute of General Custer for the benefit of the public, however, if such is the case it is not borne out by the material forwarded to us. On such basis, it would appear that such fund was simply left in the state office of a deceased officer of the association, and then picked up by his successor in state office.

While we recognize the propriety of depositing same to the name of State Historical Society, Seventh Cavalry, rather than allowing same to become entirely lost, we cannot see any basis on which the person currently holding the state office, as a state officer, retain same as a responsibility of his office or go to the expense of reorganizing the association and apparently is legally a trustee of same on behalf of its members for the purpose of contracting for a statute that apparently cannot be constructed with funds on hand.

Thus, from the information at our hand, it would appear that the Seventh U. S. Cavalry Custer Memorial Association is the trustee and

therefore legal owner subject to the equitable rights of the entrustors and beneficiaries thereof. From the information in our hands, same might well be completely defunct at the current time. If same is still in existence, or a successor to same has been appointed, the fund should simply be turned over to it, for such organization to dispose of same in accordance with the terms of the trust. We do note that in 1970 a Custer Seventh Cavalry, North Dakota Memorial Regiment, was incorporated by papers filed in the Secretary of State's Office. Inquiry might be made of its registered agent and listed officers to determine whether it does claim to be the success of the the unincorporated association.

If reasonable investigation does not disclose a claimant, the notice specified in section 54-01-02.2 of the North Dakota Century Code should be served on all persons known to have a claim to same or any part thereof as shown by records available to you, and six years later pursuant to the provisions of sections 54-01-02.1, 54-01-02.2, and 54-01-02.3 of the North Dakota Century Code, same should be turned over to the State Treasurer for deposit in the general fund of the state of North Dakota.

We hope the within and foregoing will be sufficient for your purposes. Same is, of course, based only on the information contained in correspondence referred to. Further evidentiary material as to the state's status herein could conceivably change this result.

HELGI JOHANNESON

Attorney General