

**OPINION
77-73**

January 17, 1977 (OPINION)

Mr. R. E. Lommen
State Land Commissioner
State Capitol
Bismarck, ND 58505

Dear Mr. Lommen:

This is in response to your letter of February 19, 1976, wherein you request an opinion of this office relative to property to be presumed abandoned pursuant to the Abandoned and Unclaimed Property Act (N.D.C.C. 47-30). You submitted the following facts and inquiries in your letter:

"The Board of Directors of the Tuttle Farmers Elevator passed a resolution on June 26, 1975, (a copy of which is attached to this letter) at the advice of the Farmers Union Grain Terminal Association. The resolution was adopted in an effort to cause forfeiture of all unclaimed distributions, redemptions, and payments due other persons but held by the cooperative. The goal of the resolution was to avoid the reporting responsibilities of the Abandoned Property Law.

The resolution is dated June 30, 1975, and the forfeiture date is December 31, 1976, (this date may have been intended to be December 31, 1975). The effective date of the Abandoned Property Law was July 1, 1975.

With the foregoing as background I respectfully request your opinion concerning the following questions:

1. Is a cooperative a 'business association' as such term is defined in the Abandoned property law?
2. If so, was N.D.C.C. 10-15-34 repealed by implication when the Abandoned Property Law became effective?
3. If so, can a cooperative absolve itself of the duty to report property presumed abandoned pursuant to the Abandoned Property Law by passage of a resolution pursuant to N.D.C.C. 10-15-34 prior to the effective date of the Abandoned Property Law where the forfeiture date embodied in such resolution is after the effective date of the Abandoned Property Law?
4. Is there a statute of limitations which absolves cooperatives from reporting unclaimed distributions, redemptions and payments pursuant to N.D.C.C. 47-30-15?"

Also submitted with your letter was a background memorandum prepared by your attorney that included the following additional information:

"Tuttle Farmers Elevator at a meeting held June 26, 1975,

adopted a resolution pursuant to N.D.C.C. 10-15-34. Such resolution reads as follows:

RESOLVED, that all distribution, redemptions and payments held by this cooperative on June 30, 1975, which have remained unclaimed for six years or more after the date authorized for retirement or payment in cash, are hereby declared forfeited to this cooperative as of said date, provided that notice of availability of payment has been given in accordance with law and further provided that such property shall remain unclaimed after the notice period has ended.

FURTHER RESOLVED, That notices that cash payments are available and will be forfeited if not claimed within the notice period shall be mailed to the last known addresses of the persons shown by the records to be entitled thereto, at least six months prior to December 31, 1976, which shall be the declared date of forfeiture or that such notices shall be legally published if the addresses are unknown.

Tuttle Farmers Elevator acted at the advice of the Farmers Union Grain Terminal Association which stated that if such a resolution were passed no abandoned distributions, redemptions or other payments would have to be reported to the state pursuant to the abandoned and unclaimed property law."

Your specific questions have been addressed in the order in which you submitted them. Our answer to your first question must be in the affirmative. Subsection 2 of Section 40-30-01 of the 1975 Supplement to the North Dakota Century Code defines "business association" to mean "any . . . joint stock company . . . or any association of two or more individuals for business purposes." We also note that Section 47-30-05 of the 1975 Supplement to the North Dakota Century Code entitled "Undistributed Dividends and Distributions of Business Association" specifically includes among the list of owners "a participating patron of a cooperative."

Your second question must also be answered in the affirmative. The doctrine of repeal by implication holds that the last expression of legislative will controls. See, 73 Am. Jur.2d, Statutes, Sec. 392. Repeals by implication are not favored by the courts and where an actual conflict does exist the basic presumption is that all laws are consistent with each other and can be harmonized and reconciled. See generally, 73 Am. Jur.2d 425, Statutes, Sections 254, 396. On the other hand, if an act is so contradictory and irreconcilable with a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates without any repealing clause, as a repeal of the first to the extent that the acts are irreconcilable. N.D.C.C. Sec. 47-30-05 requires that all undistributed dividends and distributions of a business association (cooperative) held unclaimed for six years after the date prescribed for payment or delivery and otherwise meeting the tests of said section are to be presumed abandoned and therefore escheatable to the state. N.D.C.C. Section 10-15-34 provides that "any distribution of proceeds, redemption of or payment based upon any security by a cooperative which remains unclaimed six years after the date

authorized for retirement or payment in cash or other property may be forfeited by the board" provided that "at least six months prior to the declared date of forfeiture, notice that such payment is available . . ." has been given to the record owner. It is clear that once a dividend, distribution, etc., remains unclaimed for six years after it became payable the presumption of abandonment arises and the property is reportable to the state under N.D.C.C. 47-30-05. It is also clear that forfeiture proceedings could not be commenced by a cooperative until the property subject to such forfeiture has remained unclaimed for six years. Due to the irreconcilable conflict between the date when the state's claim of presumed abandonment arises and the date when a cooperative's right of forfeiture arises, we must conclude that N.D.C.C. 10-15-34 was repealed by implication upon the effective date of N.D.C.C. 47-30-05, insofar as it applies to a resolution of the cooperative dated subsequent to July 1, 1975. Under the latter statute the state of North Dakota becomes an interested party, or in a sense, a holder of "vested rights" to dividends, distributions, etc. unclaimed for six years.

Your third question must also be answered in the affirmative. If a cooperative acted to pass a forfeiture resolution prior to the effective date of N.D.C.C. 47-30-05 the action was taken when N.D.C.C. 10-15-34 was still in effect (see previous discussion). Thus, a cooperative could commence forfeiture proceedings prior to the effective date of the act even though the actual forfeiture date was after the effective date of N.D.C.C. 47-30-05.

Your fourth question must be answered in the negative. Uniform Laws Annotated, Unclaimed Property (1966 Act), Sec. 17 cites numerous authority that deals with statute of limitations problems. Section 16 of the uniform act is the counterpart to N.D.C.C. 47-30-15. The uniform act provision does not, however, contain the phrase which relieves a holder from having to report property for which an applicable statute of limitations has expired prior to the effective date of the act. Thus, cases which deal with the issue of the effect of an applicable statute of limitations are of no concern since North Dakota law specifically speaks to that issue; however, cases that question the applicability of a statute of limitations are relevant. Stock dividends and money withheld from wages for purchase of bonds have been held to be in the nature of a trust against which a statute of limitations does not run. See, *Standard Oil Co. v. New Jersey*, 5 N.J. 281 (1950). Using this rationale one could conclude that the six-year limitation set out in N.D.C.C. 28-01-16(1) would not be applicable to cooperative share distributions. The comments following Section 16 of the Uniform Laws Annotated, Unclaimed Property (1966 Act) state:

Finally, it should be noted that, in connection with many types of abandoned property, the statute does not run during the period of inactivity which gives rise to the presumption of abandonment. Thus where the claim is against a fiduciary, as with some of the items involved in *Standard Oil Co. v. New Jersey*, supra, or if "demand" is a condition of the owners' right to sue, as in the case of utility deposits and certificates of deposit in banks (see the Uniform Commercial Code, Sec. 3-108(2): "A cause of action on a certificate of deposit does not accrue until demand . . ."), the problem of

removing the bar of the statute will not arise. (See also Comment, Developments in the Law, Statutes of Limitations, supra, pp. 120 et seq., for general discussion of when the statute begins to run.) In case of insurance policies, the obligation of the company is generally conditioned upon the submission of proof of death or other contingency. Thus it would seem the statute would not begin to run until such proof was submitted. Bank deposits fall into a similar category. Thus it may well be that the bulk of abandoned property falls outside the scope of the statute of limitations problem.

There is no general statute of limitations that automatically makes unclaimed dividends, distributions, redemptions, payments, etc., the property of the issuing cooperative. N.D.C.C. 10-15-34 operated as the only limitation to action by a participating patron of a cooperative. Thus, a cooperative must have taken action to forfeit such property in accordance with what has previously been discussed for any limitation to govern. Thus, it would appear that a cooperative holding unclaimed share distributions could not be relieved from liability by virtue of the exception granted to N.D.C.C. 47-30-15 since there is no applicable statute of limitations. Other types of unclaimed distributions may, however, fall within the exception.

I hope this sufficiently answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General