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January 23, 2025

Josh Haeder  
South Dakota Treasurer  
500 E. Capitol Ave., Suite 212  
Pierre, SD 57501

**OFFICIAL OPINION No. 25-01**

Re: Official Opinion Concerning the Use of a Data Matching Process to Locate Owners of Unclaimed Property

Dear Treasurer Haeder,

In your capacity as State Treasurer for South Dakota, you have requested an official opinion from the Attorney General's Office on the following question:

**QUESTION:**

Whether the State Treasurer's Unclaimed Property Division ("Division") can use a data matching process to locate owners of unclaimed property and attempt to return that property without the owner initiating a claim for the property.

**ANSWER:**

Yes. The Division can use a data matching process to locate owners of unclaimed property and attempt to return that property without the owner initiating a claim.

**FACTS:**

During COVID, the Division began using a data matching process to locate owners of unclaimed property held by the State Treasurer under the Uniform Unclaimed Property Act (SDCL ch. 43-41B). Under this process, the Division's software provider searches the Unclaimed Property database for qualifying unclaimed properties between \$10.00 and \$5,000.00. Qualifying properties are

those that have a complete Federal Tax Identification number on file and a last-known address in South Dakota. After a verification process, a claim is created and a check is issued and mailed to the property owner. Any checks returned as undeliverable are canceled and recorded in the database.

**IN RE QUESTION:**

The State Treasurer is an independently elected Constitutional officer. S.D. Const. Art. IV § 7. SDCL § 1-10-1 provides that the Treasurer “shall have charge of and safely keep all public moneys which shall be paid into the state treasury, and pay out the same as directed by law, and perform such other duties as are required of him by law.” In addition, the Treasurer “shall account to the state for all money and funds directly or indirectly received by him by virtue of his office, or as interest or compensation for the use, deposit, or forbearance of any state money in his hands or under his control.” SDCL § 4-6-22.

The Treasurer also acts as the administrator under the Uniform Unclaimed Property Act (“the Act”). SDCL ch. 43-41B. Under the Act, all intangible property that is held, issued, or owing in the ordinary course of a holder’s business and has remained unclaimed by the owner for a certain amount of time after it became payable or distributable is presumed abandoned. SDCL § 43-41B-2 and SDCL §§ 43-41B-5 to 43-41B-17, inclusive. Intangible property includes, but is not limited to, money, checks, interest, income, unpaid commissions, royalties, credit balances, refunds, stocks, insurance policy payouts, benefit plan distributions, and United States savings bonds. SDCL § 43-41B-1(10).

Intangible property is subject to the custody of the State as unclaimed property if it meets the statutory requirements for the presumption of abandonment and certain requirements connecting the property to this state. SDCL § 43-41B-3. The holder of any unclaimed property is required to pay or deliver the unclaimed property to the Treasurer. SDCL §§ 43-41B-18 and 43-41B-20. Upon payment or delivery of the property, “the state assumes custody and responsibility for the safekeeping of the property.” SDCL § 43-41B-21. The Treasurer is required to publish notice of unclaimed property and the names of persons appearing to be the owners of the property. SDCL § 43-41B-19. If the property remains unclaimed for the specified period of time after payment or delivery to the Treasurer, it shall be sold at a public sale. SDCL § 43-41B-23. All unclaimed property paid or delivered to the Treasurer shall be deposited in the general fund of this state, including the proceeds from the sale of such property. SDCL § 43-41B-24.

SDCL § 43-41B-25 sets out the process for the owner of unclaimed property to seek its return:



Filing claim with administrator—Handling of claims by administrator.

(a) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) The administrator shall consider each claim within one hundred eighty days after it is filed and provide notice to the claimant if the claim is denied in whole or in part. The notice may be sent by mail to the last address of the claimant stated in the claim for the receipt of notices. In the alternative, the notice may be sent electronically to the last e-mail address of the claimant or to the e-mail address stated in the claim for the receipt of notices.

If no address for notices is stated in the claim, the notice may be mailed to the last address, or emailed to the last e-mail address of the claimant, as stated in the claim. No notice of denial need be given if the claim fails to state either the last mailing or e-mail address to which notices are to be sent or the mailing or e-mail address of the claimant.

(c) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if the property has been sold by the administrator, together with any additional amount required by § 43-41B-22.

If the claim is for property that is presumed abandoned under § 43-41B-10 and that was sold by the administrator within one hundred eighty days of confirmed receipt of the property, the amount payable for that claim is the net proceeds of sale. When property is paid or delivered to the administrator under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

You ask whether the Division can use the data matching process described above to locate owners of unclaimed property and pay out claims without the owners themselves initiating the claims process?

The Act does not require owners to initiate the process to claim property; rather it states that an owner “may file a claim.” SDCL § 43-41B-25. When interpreting statutes, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Comm’n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain and unambiguous, there is no reason for construction[.]” The use of the term “may” in SDCL § 43-41B-25 implies a permissive or discretionary act by the owner, not a mandatory or obligatory act. *Matter of Gronseth International, Inc.*, 442 N.W.2d 229, 231 (S.D. 1989) (The use of “may” in a statute gives permissive or discretionary meaning). It is my opinion that the plain language of the statute does not establish owner-initiated claims as the exclusive avenue for the return of unclaimed property held by the Treasurer. I conclude the Treasurer has



authority to return unclaimed property to its owners without the owners themselves initiating the process.

Again, the Treasurer has the duty to “have charge of and safely keep all public moneys which shall be paid into the state treasury, and pay out the same as directed by law...” SDCL § 1-10-1. This duty applies to unclaimed property paid or delivered to the Treasurer under the Act. The Treasurer holds the property in trust and is responsible for its safekeeping, and while deposit of the unclaimed property into the general funds benefits the public, the State does not take legal title to the property without further legal process under the Act. The Treasurer has the obligation under the Act to return property to the rightful owner, and even if the property itself has been already sold at a public sale, the Treasurer is required to pay the net proceeds of the sale. SDCL § 43-41B-25.

Importantly, by virtue of the statutory requirements, the Treasurer is in possession of all information needed to verify a claim. Under the Act, the Treasurer must publish notice of unclaimed property with the name of all persons appearing to be owners. SDCL § 43-41B-19. In addition, the Treasurer is required to record the name and last known address of each person appearing to be entitled to the unclaimed property before it is deposited into the general fund. SDCL § 43-41B-24. I find nothing in the Act that prohibits the Treasurer from using the available information to return unclaimed property absent an affirmative act by the owner. Rather, it logically follows that as safekeeper of the property, the Treasurer can and should use the best means available to return unclaimed property to its rightful owner. The technology and information available through the data matching process allows the Treasurer to verify claims and return property in an efficient manner, which is the primary purpose of the Act.

**CONCLUSION:**

I conclude that based upon the statutory duties and responsibilities of the State Treasurer, including those imposed by the Act, the Treasurer has the authority to use a data matching process to locate owners of unclaimed property and attempt to return that property to the owner without the owner initiating the claim.

Sincerely,



Marty J. Jackley  
ATTORNEY GENERAL

MJJ/AS/SRB/dd