

OFFICIAL OPINION 96-01, Confidentiality of unclaimed property reports

May 29, 1996

The Honorable Richard D. Butler
State Treasurer
500 East Capitol
Pierre, SD 57501-5070

OFFICIAL OPINION 96-01

Confidentiality of unclaimed property reports

Dear Treasurer Butler:

You have requested an official opinion from this Office based upon the following factual situation:

FACTS:

The Unclaimed Property Division has been requested to provide an extraordinary amount of information from our records to a member of the public. The Office of State Treasurer is governed by the South Dakota Uniform Unclaimed Property Act, SDCL ch. 43-41B. SDCL 43-41B-18 provides reporting requirements for persons holding unclaimed property subject to the chapter. Reports are required to be filed on or before November 1 of each year, with the exception of life insurance companies which must file before May 1. Information required by the unclaimed property reports includes: the name of the holder of the unclaimed property, address and federal tax I.D. number, owner's name, address and social security number, identifying number, property description, date of last transaction, amount due, amount remitted, and certain other information. This information is used to identify the rightful owner and is consistent with what is required under similar laws enacted by other states. By March 1 of the year immediately following the report, pursuant to SDCL 43-41B-19, the Unclaimed Property Division is required to publish notice of abandoned property in the newspaper of general circulation in the last known county of the owner. This statute lists the information that is required to be included in the notice.

Based upon the foregoing factual situation, you have asked the following questions:

QUESTIONS:

1. Are the reports filed by holders of unclaimed property pursuant to SDCL 43-41B-18 and the notice information required to be published under SDCL 43-41B-19, public records?
2. If the answer to question 1 is "yes," what effect does the fact that the reports contain federal tax I.D. and social security numbers have on the public record status?
3. May the Office of the Treasurer charge for printed reports or paper copies of computer generated information, including personnel time and materials for redacting any confidential information?

IN RE QUESTION NO. 1

The state statutes relevant to your first question include SDCL 43-41B-18, which provides:

(a) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the administrator concerning the property as provided in this section. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the state treasurer.

The holder of unclaimed property shall, before filing the annual report required by this section, communicate with the owner and take necessary steps to prevent abandonment from being presumed by exercising due diligence to ascertain the whereabouts of the owner. This shall include, but is not limited to, the mailing of notice to each person having an address if said person is entitled to property of the value of fifty dollars or more presumed abandoned under this chapter.

The mailed notice shall contain:

- (1) A statement that according to the records of the holder, property is being held to which the addressee appears to be entitled;

- (2) Information regarding any changes of the name of the holder; and
- (3) A statement that the property will escheat to the state.

(b) The report must be verified and must include:

(1) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of fifty dollars or more presumed abandoned under this chapter;

(2) In the case of unclaimed funds of fifty dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(3) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(4) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under fifty dollars each may be reported in the aggregate;

(5) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(6) Other information the administrator prescribes by rule as necessary for the administration of this chapter.

(c) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(d) The report must be filed before November first of each year as of June thirtieth, next preceding, but the report of any life insurance company must be filed before May first of each year as of December thirty-first next preceding. On written request by any person

required to file a report, the administrator may postpone the reporting date or waive any interest, fees or penalties.

(e) The holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall, between the time of the commencement and the termination of the applicable dormancy period, send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if:

(1) The holder has in its records an address for the apparent owner which the holder's records disclose to be accurate;

(2) The claim of the apparent owner is not barred by the statutes of limitations; and

(3) The property has a value of fifty dollars or more.

SDCL 43-41B-19, which provides:

(a) The administrator shall cause a notice to be published not later than March first of the year immediately following the report required by § 43-41B-18 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(b) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(1) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (a);

(2) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator; and

(3) A statement that if proof of claim is not presented by the owner and the owner's right to receive the property must be established to the administrator's satisfaction to whom all claims must be directed.

(c) The administrator is not required to publish in the notice any items of less than fifty dollars unless the administrator considers their publication to be in the public interest.

(d) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under § 43-41B-4.

SDCL 1-27-1 provides:

If the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours. Any employment examination or performance appraisal record maintained by the bureau of personnel is excluded from this requirement.

Any subscription or license holder list maintained by the Department of Game, Fish and Parks may be made available to the public for a reasonable fee. State agencies are exempt from payment of this fee for approved state use. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the fee for the sale of such lists.

Any automobile liability insurer licensed in the state, or its certified authorized agent, may have access to the name and address of any person licensed or permitted to drive a motor vehicle solely for the purpose of verifying insurance applicant and policyholder information. An insurer requesting any such name and address shall pay a reasonable fee to cover the costs of producing such name and address. The Department of Commerce and Regulation shall set such fee by rules promulgated pursuant to chapter 1-26.

Any list released or distributed under this section may not be resold or redistributed. Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.

Based upon my review of these statutes, it is my opinion that the reports and notices under SDCL 43-41B-18 and -19 constitute public records. There can be no dispute that the unclaimed property statutes require the keeping and preservation of records, and that these records therefore fall within the open records requirement of SDCL 1-27-1. This public record status is maintained whether the documents themselves are preserved or whether the information is preserved. These records remain public until the Treasurer is authorized to destroy such records in accordance with SDCL 1-27-9 to -18.

This opinion does not pertain to unclaimed property information that the Office of the Treasurer may receive from other sources. For example, the Unclaimed Property Division has indicated that it receives unclaimed property information from third parties pursuant to contract. Information received pursuant to this type of contract is not a public record under SDCL 1-27-1 and thus is not subject to the disclosure provisions of this statute. Only records required by statute to be filed or preserved by the Office of Treasurer fall within the public records provisions of state law.

IN RE QUESTION NO. 2:

An exception to the open records provisions of SDCL ch. 1-27 appears at SDCL 1-27-3:

Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

Applying this statute, my predecessors and I have opined that a document or portions thereof may be held confidential or secret if there are specific laws requiring them to be so kept. See, e.g., AGO 93-10; AGO 83-25; AGO 80-27. From reviewing the information that is required to be included in the reports filed under SDCL 43-41B-18, it would appear that at least some of that information would be subject to specific laws mandating confidentiality. For example, the United States under 26 USC § 6103 and 42 USC § 405 declares federal taxpayer identification and social security numbers to be confidential. Unauthorized disclosure of such information by state officials and employees is a felony under 26 USC § 7213. Federal banking and security laws may also prevent disclosure of account numbers and other information. Any information required to be kept confidential under either state or federal law is not subject to public disclosure under SDCL 1-27-1.

In this case, it is my opinion that the fact unclaimed property reports contain confidential information does not mean the entire document and all information contained therein is confidential. Had the Legislature intended that the unclaimed property reports required to be filed under SDCL 43-41B-18 be confidential in their entirety, it could have easily done so. This is especially true given the information you have provided me that other state legislatures have declared much of the information received on unclaimed property reports to be confidential.

Thus, in answer to your question, all information contained in the required reports and notices, except such information that is specifically held confidential by law, must be made

available to the public. This can be accomplished either by redacting the documents or providing all the information that may be available to the public through computer printouts.

IN RE QUESTION NO. 3:

Your final question asks what, if any, costs the Office of Treasurer may recover when providing public information. First, in interpreting SDCL 1-27-1, it has been this office's opinion, absent specific statutory authority, that lists and other public information cannot be sold to the public. See, e.g., AGO 94-09; AGO 83-19; and AGO 80-27. Upon review of SDCL ch. 1-27 and the unclaimed property statutes, I find no authority for the Office of Treasurer to sell the public record information it is required to preserve and keep under state law. These same Attorney General's Opinions, however, do provide that a state agency may recover costs and expenses specifically incurred in copying documents, particularly when voluminous copying is required. These costs would include reasonable costs for labor, materials, and supplies. I know of no legal reason why the same standards would not apply to the Office of Treasurer when handling requests pertaining to unclaimed property records.

MARK BARNETT
ATTORNEY GENERAL

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