

MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Shirley Holloway
Commissioner
Department of Education

DATE: February 27, 1996

FILE NO.: 663-95-0030

TELEPHONE NO.: 465-3600

SUBJECT: Unclaimed Loans and
Undocumented Objects in the
State Museum Collection

FROM: Craig Wm. Black
Assistant Attorney General
Transportation Section

I. INTRODUCTION

Your predecessor, Jerry Covey, requested that this office provide advice as to whether the state's unclaimed property statutes apply to unclaimed and undocumented objects in the state museum collection. Specifically, Commissioner Covey asked whether current statutes provide a mechanism whereby a lender's right to an object can be invalidated, enabling the museum to dispose of it as necessary.

We conclude that AS 34.45.010 -- 34.45.080 provide the museum with the ability to dispose of unclaimed objects in the museum collection. We further conclude that AS 34.45.110 -- 34.45.780 allow the state to sell, destroy, or otherwise dispose of abandoned personal property.

II. DISCUSSION

A. Facts

Our analysis is based upon the following facts as related in the opinion request and through discussions with museum personnel.

The Department of Education manages the state museum and its collection. Some of the objects in the collection do not include any documentation as to how the objects joined the collection. Other objects were loaned to the museum by private parties decades ago. Still more objects were loaned to the museum for an indefinite period, while other lenders specified definite loan periods that have long since passed.

The museum has made diligent efforts to contact the lenders of these objects. Many of them have died, moved, or otherwise failed to maintain contact with the museum. As a result, the museum collection includes numerous objects that appear for all practical purposes to have been abandoned by their owners. Some of the more significant objects are deteriorating and are in need of care, care which the museum is unsure it has the authority to provide. Other objects are considered worthless and ought to be destroyed.

B. Applicable Law

The state's unclaimed property statutes are codified at AS 34.45. There are two distinct groups of statutes. The first group, AS 34.45.010 -- 34.45.080, predates statehood and applies to property left to consignees and bailees.

The second group of statutes is known as the Uniform Unclaimed Property Act ("UUPA"). AS 34.45.110 -- 34.45.780. Passed in 1986, this group is closely modeled after the UUPA adopted by the National Conference of Commissioners of Uniform State Laws in 1981. The UUPA provides the Department of Revenue ("DOR") with the authority to dispose of abandoned property delivered to it.

C. Consignees and Bailees

The first group of unclaimed property statutes, AS 34.45.010 -- 34.45.080, addresses the disposition of personal property left with consignees and bailees. A consignee is a person to whom goods are entrusted so that the goods may then be sold or delivered to another person. BLACK'S LAW DICTIONARY 307 (6th ed. 1990). A bailee is a person who holds the goods of another for a specific purpose under an agreement between the parties. BLACK'S LAW DICTIONARY 141 (6th ed. 1990). Because the museum likely does not accept loaned objects in its collection with an intention to transfer or sell them to third parties, it appears that the museum holds the objects as a bailee rather than as a consignee.

By its terms, AS 34.45.010 is directed at personal property left with merchants and with keepers of wharves, warehouses, taverns, and depots. However, AS 34.45.010 has been broadly interpreted to apply to state employees charged with the care of another person's personal property, such as law enforcement agents who manage evidence lockers or lost and found storage areas. 1983 Inf. Op. Att'y Gen. at 1 (Sep. 27; 566-055-84); 1977 Inf. Op. Att'y Gen. at 1 (Feb 23). Following this reasoning, it appears that AS 34.45.010 also applies to personal property delivered to museum personnel.

If bailment property is not claimed and taken away within one year after it is received, the bailee may arrange for its sale. AS 34.45.030. However, since the museum likely agrees to hold some objects for loan periods that exceed just one year, it would certainly be

improper for the museum to sell loaned objects before the applicable loan period passes. The museum, therefore, probably should not invoke AS 34.45.030 for an object until it has been in the collection for more than a year and the agreed loan period, if any, has passed.

The consignee and bailee statutes establish a process for disposing of abandoned bailment property. The bailee, having identified an object that appears to be unclaimed, first requests the local district judge or magistrate to have the object examined and inventoried. AS 34.45.040(a), (b). The bailee then attempts to contact the bailor of the property, typically the owner. AS 34.45.040(c), (d). If the rightful bailor is contacted, the bailor may receive the object after paying for the costs incurred by the holder, district court or magistrate, and peace officer. AS 34.45.060(b).

If attempts to locate the rightful bailor fail, the district judge or magistrate must order the property sold at public auction. AS 34.45.050(a). After sufficient notice, AS 34.45.050(b), a peace officer sells the property to the highest bidder. AS 34.45.060(a). The proceeds of the sale are first used to satisfy the expenses of the district judge or magistrate and peace officer. The remaining proceeds are then used to satisfy the expenses of the bailor. AS 34.45.060(c). If there are any funds left over, the peace officer forwards them to the district judge or magistrate. AS 34.45.070(a). If the rightful bailor does not claim the funds within one year of the date of sale, the funds are paid to DOR. AS 34.45.070(b).

By following the process provided in AS 34.45.010 -- 34.45.080, the museum can dispose of the unclaimed objects in its collection. However, these statutes do not permit the museum to obtain title to any of these objects unless the museum submits a successful bid at the public auction. If the museum wishes to obtain title to an unclaimed object in its collection without participating in an auction, it should consider following the process in the UUPA.

D. The Uniform Unclaimed Property Act

The UUPA provides a procedure for disposing of abandoned property. In essence, a person that discovers property and believes in good faith that the property is abandoned must deliver the property to DOR unless the owner properly claims it. AS 34.45.280(a), AS 34.45.320. The Department of Revenue then conducts a public sale of the property. AS 34.45.360. However, if DOR determines that the property has insubstantial commercial value, DOR has discretion to destroy or otherwise dispose of the property. AS 34.45.420. If an object that has insubstantial commercial value is nonetheless sought by the museum, it would seem permissible for DOR to give the object to the museum.

The UUPA applies to abandoned property, both tangible and intangible. AS 34.45.280(a). Just when an item of personal property has been legally abandoned is a question of fact. The UUPA contains several sections that detail when certain types of property

are presumed abandoned and thereby subject to the UUPA's disposition process. AS 34.45.140 -- 34.45.250. Once the applicable period (between one and fifteen years) passes with no contact from the owner, the property is presumed abandoned. Unfortunately, nearly all of the abandonment presumptions apply to unclaimed items of intangible personal property such as checks, bank deposits, stock, and wages, rather than tangible property such as the objects in the museum collection. The one abandonment presumption for tangible personal property in the UUPA applies to items held in safe deposit boxes and similar repositories and thus does not address objects in the museum collection. AS 34.45.260.

Without a statutory presumption that might apply to objects in the museum collection, one must resort to the common law of abandoned property for guidance in determining whether a particular object is abandoned. Under the common law, "[a]bandoned property is that of which the owner has relinquished all right, title, claim, and possession, with the intention of not reclaiming it or resuming its ownership, possession or enjoyment." *Jackson v. Steinberg*, 200 P.2d 376, 377 (Or. 1948). Abandonment is generally a question of fact, and whether a particular object has been abandoned turns on the facts and circumstances of the given situation. 1 Am. Jur.2d ABANDONED, LOST, AND UNCLAIMED PROPERTY § 41 (1995). Since no statutory abandonment presumption applies to an object in the museum collection, the issue of abandonment will turn on the circumstantial evidence surrounding the object. *U. S. v. Sylvester*, 848 F.2d 520, 525 (5th Cir. 1988).

The facts and circumstances involving each object in the museum collection will vary. Consequently, it is impossible to specify with certainty how long the museum must wait before it may safely conclude that an object has been abandoned. As indicated above, AS 34.45.030 and AS 34.45.260 contemplate the disposal of tangible personal property if not claimed by the owner within one year. Therefore, the museum probably should not consider an object lent for a stated period of time to be abandoned until one year has passed since the conclusion of the loan period. Similarly, for an object loaned for an unspecified period of time or for an object acquired under unknown circumstances, the museum probably should not consider the object abandoned until it has spent a year making diligent efforts to contact the owner without success. Once abandonment is established, the museum may follow the disposal scheme in the UUPA.

III. CONCLUSION

The legislature has provided the museum with two methods for resolving the disposition of unclaimed objects entrusted to its care. If the museum simply wishes to dispose of an object, it may follow the consignee and bailee statutes and arrange for its sale. If the museum wishes to acquire the object, it must make a successful bid at the sale. The museum may also follow the UUPA process and dispose of the object with the assistance of DOR. The UUPA has the added benefit of allowing DOR the discretion of fashioning an appropriate disposition for

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objects with minimal commercial value. For these objects, it may well be appropriate for DOR to simply give the object to the museum.

Please let me know if I may be of further assistance in this matter.

CWB/bap