

OPINION NO. 87-031**Syllabus:**

1. For purposes of R.C. Chapter 169, cash dividends declared and paid upon shares of stock held in trust by a financial institution may qualify as unclaimed funds under R.C. 169.01(B) and R.C. 169.02(E) notwithstanding the participation of a third party as the issuing corporation's paying agent in the transmittal of the dividends from the corporation to the financial institution.
2. A financial institution that reports and transfers to the State of Ohio as unclaimed funds cash dividends paid to it upon shares of stock it holds in trust is relieved of liability, pursuant to R.C. 169.07, for any claims subsequently arising out of such transfer.

To: Kenneth R. Cox, Director, Ohio Department of Commerce, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 29, 1987

I have before me your request for my opinion, submitted on behalf of the Division of Unclaimed Funds, regarding the reporting as unclaimed funds of certain cash dividends paid

upon shares of stock that are held in trust by a financial institution. According to your letter, shares of stock are sometimes placed by the owner thereof with a financial institution for deposit in a trust account. Thereafter, the financial institution, in its capacity as the shareowner's trustee, assumes responsibility for the administration and management of the shares of stock. In this regard, the financial institution may receive payments of cash dividends declared upon such shares of stock by the issuing corporation.

On occasion, however, the shares of stock may be sold by the financial institution subsequent to the date on which the corporation declares a dividend on the shares, but prior to the date such dividend is actually paid. Thus, the shares of stock are no longer held by the financial institution at the time it receives the dividend check, although the former shareowner retains a right to the dividend in question. You also indicate that the transmittal of the dividend from the corporation to the financial institution may be facilitated by a third party, such as a brokerage house, which serves as the corporation's paying agent. Further, in some instances the financial institution is unable to locate the former shareowner for the purpose of forwarding him the dividend since the shareowner has failed, for a significant period of time, either to correspond with the financial institution concerning the dividend, transact business with the financial institution, or otherwise indicate an interest in or knowledge of such dividend.

With respect to the foregoing situation, you wish to know whether such cash dividends may qualify as unclaimed funds for purposes of R.C. Chapter 169 when the transmittal of the dividends from the issuing corporation to the financial institution has been facilitated by a third party that serves as the corporation's paying agent. In addition, you wish to know whether a financial institution may incur any liability to persons asserting claims to such dividends following the reporting and transfer of the dividends by the financial institution to the State of Ohio as unclaimed funds.

Resolution of your questions requires an examination of several of the provisions appearing in R.C. Chapter 169. R.C. Chapter 169 establishes a comprehensive scheme for the reporting and subsequent disposition of unclaimed funds that are in the possession or control of persons other than the rightful owners thereof. See 1987 Op. Att'y Gen. No. 87-011 (examining in detail the various provisions appearing in R.C. Chapter 169 and the duties and responsibilities thereby imposed upon holders of unclaimed funds). In this regard, R.C. 169.03 states generally that, "[e]very holder of unclaimed funds and, when requested, person which could be the holder of unclaimed funds, under Chapter 169. of the Revised Code shall report to the director of commerce with respect to the unclaimed funds as provided in this section," R.C. 169.03(A), and further enumerates the various filing and notice requirements imposed upon the holders of unclaimed funds with respect to the reporting thereof. See R.C. 169.03(A)(1)-(5); R.C. 169.03(B)-(H). See also R.C. 169.06 (publication of notice by the Director of Commerce with respect to unclaimed funds reported under R.C. 169.03). R.C. 169.05 sets forth the process for the disposition of unclaimed funds reported pursuant to R.C. 169.03. See R.C. 169.05(A)-(C). The practical effect of R.C. 169.05 "is to provide for the transfer to the State of Ohio of all funds reported to the Director of Commerce...as unclaimed funds." Op. No. 87-011

at _____. See also R.C. 169.08 (procedure for requesting a refund of unclaimed funds by any person claiming a property interest therein); R.C. 169.10 (prohibitions imposed with respect to the duties and responsibilities conferred upon holders of unclaimed funds by R.C. Chapter 169); R.C. 169.12 (civil penalties imposed for violations of R.C. 169.03 and R.C. 169.05).

R.C. 169.02 defines the categories of moneys, rights to moneys, or intangible properties that may qualify as "unclaimed funds," as that term is used in R.C. Chapter 169. R.C. 169.02(A)-(R). With respect to the question posed in your letter, R.C. 169.02(E) provides, in pertinent part, that the following constitute unclaimed funds:

Any certificates, securities as defined in section 1707.01 of the Revised Code, nonwithdrawable shares, other instruments evidencing ownership, or rights thereto or funds paid toward the purchase thereof, or any dividend, capital credit, profit, distribution, interest, or payment on principal or other sum, held or owed by a holder, including funds deposited with a fiscal agent or fiduciary for payment thereof, unclaimed for five years, except, in the case of instruments representing an ownership interest, unclaimed for seven years.

....
In the case of any such funds accruing and held or owed by a corporation under division (E) of section 1701.24 of the Revised Code, such corporation shall comply with this chapter, subject to the limitation contained in section 1701.34 of the Revised Code. The period of time for which such funds have gone unclaimed specified in section 1701.34 of the Revised Code shall be computed, with respect to dividends or distributions, commencing as of the dates when such dividends or distributions would have been payable to the shareholder had such shareholder surrendered his certificates for cancellation and exchange by the date specified in the order relating thereto.¹ (Emphasis and footnote added.)

Further, R.C. 169.01 describes the circumstances under which the funds delineated in R.C. 169.02 may qualify as "unclaimed." That section also defines the terms, "owner," and "holder," as those terms are used in R.C. Chapter 169. R.C. 169.01 provides, in part, as follows:

(B) "Unclaimed funds" means any moneys, rights to moneys, or intangible property, described in section

¹ R.C. 1701.24(E) requires the holders of outstanding share certificates to surrender such share certificates to the issuing corporation upon the corporation's determination and order that those outstanding certificates should be cancelled and exchanged for other certificates. R.C. 1701.34 further provides that in the case of mailed but uncashed dividend checks, "no action for the recovery of such dividend or distribution or the amount thereof shall be brought by the shareholder or other person entitled to such dividend or distribution more than six years after the date of mailing the check."

169.02 of the Revised Code, when, as shown by the records of the holder, the owner has not, within the times provided in section 169.02 of the Revised Code, done any of the following:

- (1) Increased, decreased, or adjusted the amount of such funds;
- (2) Assigned, paid premiums, or encumbered such funds;
- (3) Presented an appropriate record for the crediting of such funds or received payment of such funds by check, draft, or otherwise;
- (4) Corresponded with the holder concerning such funds;
- (5) Otherwise indicated an interest in or knowledge of such funds;
- (6) Transacted business with the holder.

....
(C) "Owner" means any person, or his legal representative, entitled to receive or having a legal or equitable interest in or claim against moneys, rights to moneys, or other intangible property, subject to this chapter.

(D)(1) "Holder" means any person who has possession, custody, or control of moneys, rights to moneys, or other intangible property, or who is indebted to another, if any of the following applies:

- (a) Such person resides in this state;
- (b) Such person is formed under the laws of this state;
- (c) Such person is formed under the laws of the United States and has a home office or principal place of business in this state;
- (d) The records of such person indicate that the last known address of the owner of such moneys, rights to moneys, or other intangible property is in this state.

Thus, as a general matter, dividends declared and paid upon shares of stock qualify as unclaimed funds for purposes of R.C. Chapter 169 if they are held or owed by a holder for the appropriate period of time specified in R.C. 169.02(E), and if, during such period of time, the rightful owner of such dividends has failed to take any of the actions enumerated in R.C. 169.01(B)(1)-(6) with respect thereto. Op. No. 87-011.

I now direct my attention to your first question. You ask whether cash dividends paid to a financial institution upon shares of stock held in trust thereby may qualify as unclaimed funds for purposes of the reporting requirements imposed upon holders thereof by R.C. Chapter 169 when the transmittal of the dividends has, in fact, been facilitated by a third party that serves as the issuing corporation's paying agent. You indicate that one financial institution has suggested that the issuing corporation's paying agent should be deemed an "owner" of the dividends, as that term is defined in R.C. 169.01(C). This institution thus argues that since the paying agent regularly corresponds with the financial institution concerning such dividends, or transacts business therewith, such dividends may not properly qualify as unclaimed funds under R.C. 169.01(B).

I conclude that such dividends, paid upon shares of stock held in trust by a financial institution, may qualify as unclaimed funds when the shareowner to whom the dividends are owed fails to take any of the actions enumerated in R.C.

169.01(B)(1)-(6) with respect thereto. Clearly, dividends declared and paid upon shares of stock are included within the category of unclaimed funds defined in R.C. 169.02(E). Such dividends, therefore, paid upon shares of stock held in trust for the shareowner's benefit, may qualify as unclaimed funds for purposes of the reporting requirements of R.C. Chapter 169 if the shareowner to whom the dividends are owed fails to take any of the actions enumerated in R.C. 169.01(B)(1)-(6) with respect to those dividends for the appropriate period of time specified in R.C. 169.02(E). Further, I reach this conclusion notwithstanding the participation of a third party as the issuing corporation's paying agent in the transmittal of the dividends in question from the corporation to the financial institution.

The term, "owner," as it is used in R.C. Chapter 169, is defined in R.C. 169.01(C) as "any person, or his legal representative, entitled to receive or having a legal or equitable interest in or claim against moneys, rights to moneys, or other intangible property, subject to this chapter." Certainly, in the case of cash dividends declared upon shares of stock, R.C. 169.01(C) includes within its terms the shareowner to whom or on whose behalf such dividends are paid, since such shareowner is entitled to receive, and has a legal or equitable interest in, those dividends. See generally Zamore v. Whitten, 395 A. 2d 435, 443 (Maine 1978)("[a] share of stock is a proportional ownership in the corporation itself, never realized except upon dissolution and winding up of the corporation, but providing the right in the meantime to receive such profits as may be made and declared in the form of dividends"); 1985 Op. Att'y Gen. No. 85-081 at 2-325. I discern no rational basis, however, for further concluding that a third party that facilitates the corporation's payment of such dividends may also be considered an "owner" thereof, as that term is defined in R.C. 169.01(C). In this regard, the third party paying agent, unlike the shareowner, has no legal or equitable interest in those dividends, and is not otherwise entitled to receive the dividends for its use and benefit simply because of the functions it performs in conveying the dividends from the corporation to either the shareowner or the financial institution that acts as the shareowner's trustee. It would, therefore, be incorrect to characterize such paying agent as an "owner" of those dividends under R.C. 169.01(C). Accordingly, cash dividends declared and paid upon shares of stock held in trust by a financial institution may qualify as unclaimed funds under R.C. 169.01(B) and R.C. 169.02(E) notwithstanding the participation of a third party as the issuing corporation's paying agent in the transmittal of the dividends from the corporation to the financial institution.

You have also inquired whether a financial institution that receives dividends paid upon shares of stock it holds in trust may be liable to persons asserting claims to such dividends after the financial institution has reported and transferred those dividends to the State of Ohio as unclaimed funds. The answer to this question is provided by R.C. 169.07, which reads, in part, as follows:

(A) Upon the payment of unclaimed funds to the director of commerce under section 169.05 of the Revised Code the holder will be relieved of further responsibility for the safekeeping thereof and will be held harmless by the state from any and all liabilities for any claim arising out of the transfer of such funds to the state.

R.C. 169.07(B) further provides that if legal proceedings are subsequently brought against a holder that has paid unclaimed funds to the Director of Commerce, the Director shall intervene in the action and assume the defense thereof upon written notice by the holder of the commencement of such proceedings. If a judgment is rendered against the holder, the Director of Commerce, upon proof of satisfaction of such judgment, is required to reimburse the holder for the amount of the judgment or, if the holder retained such funds, to enter into an agreement modified to reflect the satisfaction of such judgment, and to reimburse the holder for any legal fees, costs, and expenses incurred in the proceedings. Id.

Thus, the express language of R.C. 169.07 makes it clear that a holder of unclaimed funds shall be held harmless from any and all liabilities for any claims arising out of the transfer of such funds to the State of Ohio. Consequently, a financial institution that reports and transfers to the State of Ohio as unclaimed funds cash dividends paid to it upon shares of stock it holds in trust is relieved of liability for any claims subsequently arising out of such transfer. R.C. 169.07(A). Further, such financial institution is entitled to reimbursement from the state upon proof of satisfaction of any judgment that may be rendered against it with respect to any such claims. R.C. 169.07(B).

Accordingly, based upon the foregoing it is my opinion, and you are advised that:

1. For purposes of R.C. Chapter 169, cash dividends declared and paid upon shares of stock held in trust by a financial institution may qualify as unclaimed funds under R.C. 169.01(B) and R.C. 169.02(E) notwithstanding the participation of a third party as the issuing corporation's paying agent in the transmittal of the dividends from the corporation to the financial institution.
2. A financial institution that reports and transfers to the State of Ohio as unclaimed funds cash dividends paid to it upon shares of stock it holds in trust is relieved of liability, pursuant to R.C. 169.07, for any claims subsequently arising out of such transfer.