

with the provisions of Section 9984 of the General Code, and send an itemized bill of the expenses thereof to the county commissioners of the county from which the pauper was sent to the institution. Such county commissioners shall immediately pay the bill to such board in control."

From the sections which have been quoted, it is apparent that there is no authority originally in the superintendent of the Longview Hospital to utilize the corpse for any purpose whatsoever. Section 9984 of the Code requires that he shall hold unclaimed bodies for thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. On application being made in writing by these authorities, the superintendent is required to deliver to such authorities the body for purposes of medical or surgical study or dissection. I think it may be presumed that this mandatory requirement as to delivery of the body contemplates its delivery in its natural state without mutilation in any respect. In the event that the body is not claimed under these sections, the provisions of Section 3496 becomes applicable and it is the duty of the superintendent to provide for the burial of the body and to secure reimbursement of the expense involved from the county from which the inmate was sent to the institution. This section likewise contains no express or implied authority to dissect the body or to remove any of its parts in any way.

I am, therefore, forced to the conclusion that there exists no original authority in the superintendent of the Longview State Hospital, or any of its officials, to remove neurological material from unclaimed corpses of patients who have died in the institution. However beneficial the use of this material may be to the officials of the hospital, the statutory duty with relation to the disposal of unclaimed bodies clearly negatives the right of removal.

I may suggest, however, that I see no reason why, after a body has been claimed by a college or medical society, an arrangement cannot be entered into whereby authority may be given by such college or medical society to the professional attaches of the hospital to remove certain portions of the body for medical or surgical study or dissection. In other words, if the college or society sees fit to allow professional students to utilize the bodies to which it is entitled for the purposes for which it may use them, I see no objection to such course.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2007.

PERSONAL PROPERTY—ESCHEATED TO STATE—DISPOSITION OF SAME.

SYLLABUS:

1. *Personal property which, by virtue of Section 8579 of the General Code, escheats to the state, may be collected by the prosecuting attorney of the county, whether the same be in money or other form and, if such personal property is in a form other than money, it is the duty of the prosecuting attorney to reduce such property to money and pay over the proceeds to the county treasurer.*

2. *Moneys paid into the county treasury representing the proceeds of personal property escheated to the state by virtue of Section 8579, General Code, should be apportioned and distributed to the various school districts and parts of districts in the county at the times and in the manner provided for the apportionment and distribution of the levy of two and sixty-five hundredths mills, as provided in Section 7575 of the General Code.*

COLUMBUS, OHIO, April 23, 1928.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“A resident of this county died intestate, leaving no persons living to inherit the deceased's estate. The estate, consisting of personal property, will net approximately \$10,000.00.

Section 8579 G. C. provides that under such a contingency personal property shall pass to the state and enjoins on the prosecuting attorney the duty of collecting and paying such estate over to the treasurer of the county to be applied exclusively to the support of the common schools of the county in such manner as is prescribed by law.

Two questions arise in the particular instance. The time for the administrator to settle the estate is about due. All of the estate is in money except a note for \$1,000, which will not become due and payable until 1929. The administrator does not want to hold the settlement of the estate open for another year and the query is whether the prosecuting attorney may accept the undue and unpaid note on distribution in kind and turn it over to the treasurer of the county, to be collected by the treasurer when it becomes due.

The second query is in behalf of the treasurer and is in what manner and on what basis the fund of \$10,000 is to be distributed to the various school districts of the county. I have been unable to find any provision in the statutes for the distribution of money that is thus escheated to the state.”

Section 8579 of the General Code, to which you refer, is as follows:

“If there be no person living to inherit it by the provisions of this chapter, such personal property shall pass to and be vested in the state. The prosecuting attorney of the county in which letters of administration are granted upon such estate, shall collect and pay it over to the treasurer of such county; to be applied exclusively to the support of the common schools of the county in which collected, in such manner as is prescribed.”

The duty is imposed by this section upon the prosecuting attorney to collect the personal property which by virtue of the first sentence of the section vests in the state. Upon collection the prosecuting attorney is to pay it over to the treasurer of the county.

I am not prepared to say that, prior to collection, it is necessary that the personal property referred to, which escheats to the state, must at all events be reduced to money. In other words, as an incident to the duty to collect, I believe that the prosecuting attorney may receive personal property other than money, such as notes and claims, and himself proceed to liquidate such assets. I think it clear from the statement of the section that he is to pay it over to the treasurer, that he must himself reduce the personal property to money before delivering to the treasurer. Consequently,

I feel that the note to which you refer should not, at all events, be delivered to the treasurer by the prosecuting attorney, but should be held by the latter until collected and the proceeds paid over.

It is to be observed, however, that the administrator of the estate of the deceased can only make distribution in kind under authority of Section 10839 of the General Code, which is as follows:

“An executor or administrator who has paid all the debts of an estate, but has in his possession notes, bonds, stocks, claims, or other rights in action, belonging thereto, with the approval of the probate court entered on its journal, and the assent and agreement of the persons entitled to the proceeds of such assets as distributees, including executors, trustees and guardians, may distribute and pay these over in kind to those of such distributees as will receive them.”

In this particular instance the prosecuting attorney is the person entitled to the proceeds as distributee for and on behalf of the state and apparently his assent and agreement to distribution in kind would be a necessary prerequisite to the order of the Probate Court approving distribution in kind.

It may be suggested that the administrator in this instance need not, if he so prefers, make distribution in kind, since he may, under authority of Section 10697 of the General Code, sell at either public or private sale the note in question. So far as pertinent that section is as follows:

“5. The executor or administrator within one year after his appointment, unless for good cause shown further time is granted by the probate court, and unless he had made or is able to make distribution in kind to the parties who are entitled to their respective portions of the estate in his hands, may sell either at public or private sale, any promissory notes, claims, demands, rights in action, bonds and stocks by first obtaining an order of the probate court therefor. The probate court may order said executor or administrator to sell at public or private sale and shall fix the price for which any of said property may be sold, and the same shall not be sold for less than the price so fixed. Provided, further, that if said property shall not be sold on the first application, the executor or administrator shall report his proceedings to the probate court, and the court may make such further orders as he in his judgment may deem best.”

If the note may be disposed of in this manner, it would perhaps be not advisable to distribute in kind, placing the obligation upon the prosecuting attorney to keep the note safely until maturity and then proceed to collect.

Your second inquiry is in what manner and on what basis the fund of \$10,000 is to be distributed to the various school districts of the county. The language of Section 8579 of the Code indicates, of course, that personal property which has escheated to the state shall be applied exclusively to the support of the common schools of the county “in such manner as is prescribed by law.”

In Opinions of the Attorney General for 1915, at page 76, the first branch of the syllabus is as follows:

“Distribution of escheated personal property to schools of a county, collected under Section 8579, G. C., is to be made as provided for the state common school fund under Section 7600, G. C., as said section stands, when the money is paid into the county treasury.”

Section 7600 of the General Code has been substantially changed since the former opinion was rendered, but the portion of the section then under consideration, upon which the opinion was predicated, remains practically the same. Section 7600 of the Code, as it then read, had as its last sentence the following:

“All other money in the county treasury for the support of common schools, and not otherwise appropriated by law, shall be apportioned annually in the same manner as the state common school fund.”

As pointed out in the prior opinion, there was at that time no provision of law making any specific appropriation of sums of money escheating to the state. This situation still exists as I am unable to find any place where funds derived from escheated property are specifically appropriated for school purposes. The present language of Section 7600 of the General Code is as follows:

“After each semi-annual settlement with the county treasurer, each county auditor shall immediately apportion school funds for his county. Each city school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in Section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be apportioned to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as shown by the reports required by law, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

The annual distribution attributable to teachers and employes shall be according to the following schedule; thirty-seven and one-half per centum of the salary of each teacher or educational employe receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed nine hundred dollars for any teacher or educational employe or other such person. In the case of a superintendent under the provisions of Section 4740 distribution shall be made at a given per centum multiplied by a fraction which represents the part of his working time not given to supervisory duties.

The annual distribution attributed to expense of transportation of pupils shall be fifty per centum of the personal service expense incurred in such transportation.

No school district shall be entitled to receive any portion of the said funds in any year until the reports of numbers, salaries and qualifications of teachers employed and aggregate days of attendance and expense of transportation of pupils have been made as required by law. The school tax levied by boards of education and collected from the several districts or parts of districts in the county shall be paid to the districts from which it was collected.

Money received from the state on account of interest on the common school fund shall be apportioned to the school districts and parts of districts