



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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September 25, 1998

FILE NO. 98-020

FINANCIAL INSTITUTIONS:
Small Estates Affidavits

Frank C. Casillas
Director
Department of Financial Institutions
100 West Randolph Street
Chicago, Illinois 60601

Dear Mr. Casillas:

I have your letter wherein you inquire whether the Director of the Department of Financial Institutions, as administrator of the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/1 et seq. (West 1996)), is considered to be a "person or corporation" which is required to pay over funds in its custody when presented with a small estate affidavit pursuant to section 25-1 of the Illinois Probate Code (755 ILCS 5/25-1 (West 1996)). For the reasons hereinafter stated, it is my opinion that the Director is not exempted from paying over funds in compliance with a small estate affidavit which is presented in the proper form.

Section 25-1 of the Probate Act provides, in part:

" * * *

(a) When any person or corporation (1) indebted to or holding personal estate of a decedent, (2) controlling the right of access to decedent's safe deposit box or (3) acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right is furnished with a small estate affidavit in substantially the form hereinafter set forth, that person or corporation shall pay the indebtedness, grant access to the safe deposit box, deliver the personal estate or transfer or issue the evidence of interest, indebtedness, property or right to persons and in the manner specified in paragraph 11 of the affidavit or to an agent appointed as hereinafter set forth.

* * *

(d) Release. Upon payment, delivery, transfer, access or issuance pursuant to a properly executed affidavit, the person or corporation is released to the same extent as if the payment, delivery, transfer, access or issuance had been made or granted to the representative of the estate. Such person or corporation is not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, access or issuance is made or given is answerable therefor to any person having a prior right and is accountable to any representative of the estate.

(e) The affiant signing the small estate affidavit prepared pursuant to subsection (b) of this Section shall indemnify and hold harmless all creditors and heirs of the decedent and other persons relying upon the affidavit who incur loss because of such

reliance. That indemnification shall only be up to the amount lost because of the act or omission of the affiant. Any person recovering under this subsection (e) shall be entitled to reasonable attorney's fees and the expenses of recovery.

* * *

"

(Emphasis added.)

The terms "person" and "corporation" are not defined in the Probate Code (755 ILCS 5/1-1 et seq. (West 1996)). The term "persons", however, may, when appropriate, include bodies corporate and politic, as well as individuals. (5 ILCS 70/1.05 (West 1996).) Moreover, excluding the Director, as administrator, from the application of section 25.1 of the Probate Code would not be consistent with the apparent intent of section 20 of the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/20 (West 1996)), which provides, in part:

"(a) The Director shall consider any claim filed under this Act and may, in his discretion, hold a hearing and receive evidence concerning it. Such hearing shall be conducted by the Director or by a hearing officer designated by him. No hearings shall be held if the payment of the claim is ordered by a court, if the claimant is under court jurisdiction, or if the claim is paid under Article XXV of the Probate Act of 1975. The Director or hearing officer shall prepare a finding and a decision in writing on each hearing, stating the substance of any evidence heard by him, his findings of fact in respect thereto, and the reasons for his decision. The Director shall review the

findings and decision of each hearing conducted by a hearing officer and issue a final written decision. The final decision shall be a public record. Any claim of an interest in property that is filed pursuant to this Act shall be considered and a finding and decision shall be issued by the Department in a timely and expeditious manner.

* * *

"

(Emphasis added.)

Thus, section 20 of the Uniform Disposition of Unclaimed Property Act clearly contemplates that the Director will pay claims based upon small estates affidavits. Indeed, such claims are entitled to the deference accorded to court orders, and are to be paid without the necessity for a hearing.

The concerns you have raised in your letter regarding the presentation of conflicting affidavits relating to the same estate and affidavits presented by unrelated third party creditors may be addressed by an examination of the form and purpose of the affidavit provided for in section 25-1. As quoted above, subsection 25-1(a) specifically predicates payment upon the presentation of an "affidavit in substantially the form * * * set forth * * *" in subsection 25-1(b). Paragraph 7 of the form provides for the payment of funeral expenses. Paragraph 8 requires the affiant to swear that "[t]here is no known unpaid claimant or contested claim against the decedent, except as

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stated in paragraph 7". Paragraphs 9 and 10 identify surviving heirs and legatees and their rights. Paragraph 11 sets forth the distribution of property.

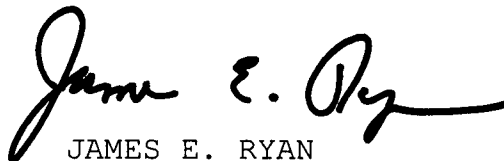
Based upon the statutory form, it is clear that the purpose of the affidavit is to permit the payment of funeral expenses and the distribution of small estate assets to the heirs and legatees when there are no other claimants or disputed claims. Use of a small estate affidavit when there are disputes as to distribution or outstanding third party claims other than funeral expenses is inappropriate. Therefore, it is my opinion that affidavits which show the existence of such claims or disputes are not in substantially the form set forth in section 25-1. The Director may, for that reason, decline to pay claims based upon such affidavits.

I further note that section 25-3 of the Probate Code (755 ILCS 5/25-3 (West 1996)) provides for the initiation of a civil action for recovery under a small estate affidavit upon proof of the facts required to be stated therein. If conflicting evidence is presented, the court will be required to determine whether the necessary facts exist for payment upon the affidavit or, alternatively, that administration of the estate pursuant to

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other provisions of the Probate Code will be necessary to resolve
the disputed claims.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name.

JAMES E. RYAN
ATTORNEY GENERAL