

PUBLIC INFORMATION ACT - COMPTROLLER - CERTAIN
INFORMATION ABOUT ABANDONED PROPERTY MAY NOT BE
DISCLOSED

November 17, 1992

Mr. Stephen M. Cordi
Director, Comptroller of the Treasury

You have requested our opinion whether a part of a public record that discloses the monetary value or description of property reported to the Unclaimed Property Section as abandoned property must be withheld from public disclosure.

For the reasons given below, we conclude that this information must be withheld from public disclosure.

I

Background

You have advised us that the Unclaimed Property Section periodically receives requests for inspection, via computer or hard copy, of lists of property reported as abandoned under the Maryland Uniform Disposition of Abandoned Property Act, §17-101 *et seq.* of the Commercial Law Article ("CL" Article). Among other information, these lists contain the name and last known address of the putative owner and the monetary value or description of each item reported as abandoned.

These requests are usually filed by individuals who are in the business of tracing owners of abandoned property. The tracers use the lists to attempt to locate the owners. The tracers then may contract with the owners to assist the owners in recovering their property, for a fee.¹

As a practical matter, the tracers cannot maintain their business unless they are able to differentiate owners of significant amounts of abandoned property from owners of comparatively small amounts. Canvassing everyone on the list would be prohibitively expensive. Thus,

¹ CL §17-325 renders unenforceable any agreement "to pay compensation to recover or assist in the recovery of property made within 24 months of the date the property is paid or delivered to the abandoned property office"

information about the monetary value of the property is crucial to these requesters.

II

Confidentiality and Public Disclosure Provisions

Section 10-617 of the State Government Article ("SG" Article) provides that, "[u]nless otherwise provided by law," certain information in public records must be withheld from public inspection. SG §10-617(a). "[I]nformation about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness," is made ordinarily nondisclosable by SG §10-617(f)(2).

It is self-evident that a list showing how much money or what type of property people have left unclaimed reveals information about the "assets" of those people. Indeed, this office has concluded in the past that the bare fact of ownership of an asset is ordinarily nondisclosable under SG §10-617(f)(2). Opinion No. 85-011 (April 15, 1985) (unpublished).²

Thus, unless something in the Abandoned Property Act itself provides otherwise, you have no discretion in the matter: You must withhold this personal financial information.³ *Accord, Twiss v. Department of the Treasury*, 124 N.J. 461, 591 A.2d 913 (1991) (amounts in unclaimed bank accounts transferred to the state remain confidential under New Jersey's Right to Know Law and may not be disclosed to tracers); *Merrill v. Oklahoma Tax Commission*, 831 P.2d 634 (Okla. 1992) (even in the absence of a statute requiring confidentiality, Oklahoma Tax Commission had validly exercised its administrative authority in promulgating a regulation maintaining the confidentiality of reports filed by holders of abandoned property).

² The legislative history confirms that SG §10-617(f)(2) is meant to require "that personally identifiable data which is financial in character not be disclosed, unless otherwise provided by law." Governor's Information Practices Commission, *Final Report* at 534-35 (1981).

³ SG §10-617(f)(3) authorizes a custodian to permit inspection of financial information by the person in interest. As applied to SG §10-617(f), a "person in interest" is the person who is the subject of a public record or a designee of that person. SG §10-611(e)(1). If the person has a legal disability, the "person in interest" would include the parent or legal representative of the person. SG §10-611(e)(2).

CL §17-311(b)(1) requires the Unclaimed Property Section to publish the names and last known addresses of owners of abandoned property before the holders remit the property to the Unclaimed Property Section. Consequently, such information is not confidential under SG §10-617(a) and may be disclosed upon request. Moreover, the Abandoned Property Act authorizes a limited disclosure about the amount of assets. That is, under CL §17-311(c), the Unclaimed Property Section is not required to publish "any item valued at less than \$50." Thus, the statute renders two pieces of information nonconfidential: that a person owns abandoned property; and that it is worth at least \$50. We cannot discern any other information about the property that is subject to disclosure, and therefore only to this limited extent does "other law" provide an exception to the nondisclosure mandate of SG §10-617(f)(2).

III

Conclusion

In summary, it is our opinion that the Unclaimed Property Section is prohibited by law from disclosing the value or description of assets reported to it as abandoned property, other than to the owner or the owner's designee.

Our conclusion about current law is not intended to address the underlying policy issue. Some of those whose businesses are severely affected by the lack of information about prospective customers have argued to us that the private sector has an important role to play in helping people get their unclaimed property back. If the General Assembly agrees with these policy arguments, it can amend the Abandoned Property Act to authorize disclosures that are not now permitted.

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RETIREMENT SYSTEMS

COUNTIES - SHERIFFS - STATE'S ATTORNEYS - STATE MUST PAY EMPLOYER'S SHARE OF PENSION CONTRIBUTIONS

January 15, 1992

The Honorable Charles L. Benton
Secretary of Budget and Fiscal Planning

The Honorable Louis L. Goldstein
Chairman, Board of Trustees of Maryland
State Retirement & Pension Systems

You have requested our opinion whether the State may assess the cost of certain retirement benefits for elected or appointed officials, such as local sheriffs, to the counties in which the officials serve or, alternatively, to the officials themselves. The officials in question are those who exercise the option to participate in the State's Employees Retirement System or the Pension System for Employees (the "Pension Systems").

For the reasons given below, we conclude that under current law the State may assess neither the counties nor the officials for the contributions, because the State has a statutory duty to pay the contributions to the Pension Systems.

I

Background

As a general rule, membership in the State's Pension Systems is limited to those employees "for whom compensation is provided by State appropriation, or whose compensation is paid by State funds" Article 73B, §§1(3) and 111(4) of the Maryland Code.¹ The General Assembly has enacted certain exceptions to this general rule, however.

¹ Unless otherwise indicated, all statutory references in this opinion are to Article 73B of the Code.