

ATTORNEY GENERAL

You are therefore advised that an amendment to the Health Care Facilities Financing Authority Law to provide for the financing or refinancing of proprietary health care facility construction projects through the public sale of bonds by the Authority would not be in derogation of the provisions of Article VIII, § II, par. 1 or Article VIII, § III, par. 3 of the 1947 New Jersey Constitution.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: JONATHAN WEINER
Deputy Attorney General

* The statutes creating the Authority herein and the Educational Facilities Authority, and the resultant responsibilities and authorities of each, are strikingly similar. For example, both are public bodies corporate and politic and instrumentalities exercising public and governmental functions (N.J.S.A. 26:2I-4 and N.J.S.A. 18A:72A-4); both may borrow money and issue bonds which are not to be deemed debts or liabilities of the State or a pledge of the faith and credit of the State (N.J.S.A. 26:2I-5, 7 and 9 and N.J.S.A. 18A:72A-10); both may fix rates, rents, fees and charges to pay the cost of maintaining the project and to pay the principal and interest on the bonds issued on the project (N.J.S.A. 26:2I-10 and N.J.S.A. 18A:72A-11); and both may construct, operate and manage projects for the use and benefit of the participating entity and its students, faculty and staff (N.J.S.A. 26:2I-28 and N.J.S.A. 18A:72A-30).

September 13, 1974

JOHN P. CALLAHAN, *Director*
Division of State Auditing
Office of Fiscal Affairs
State House
Trenton, New Jersey

FORMAL OPINION NO. 9-1976

Dear Director Callahan:

You have requested an opinion concerning the appropriate disposition of property belonging to inmates of the New Jersey Home for Disabled Soldiers who die intestate without having been survived by any heirs at law or next of kin. The financial post-audit report of the New Jersey Memorial Home for Disabled Soldiers at Menlo Park has recommended that unclaimed monies be transferred to the State Treasurer as authorized by N.J.S.A. 30:4-132. This statute provides as follows:

“Unclaimed personal property of deceased patients, and of other former patients of an institution supported in whole or in part by state funds, shall be held at such institution, awaiting claim therefor, for a period

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of one year, after which time, under the direction of the commissioner and at a time named by him, unclaimed property may be sold, at public or private sale. The proceeds shall be held by the chief executive officer of the institution until the end of the succeeding fiscal year, at which time he shall turn into the state treasury all proceeds remaining unclaimed by the persons legally entitled thereto."

The Department of Institutions and Agencies, nevertheless, has urged that unclaimed funds should more properly be disposed of in accordance with N.J.S.A. 30:6AA-14, which provides as follows:

"Moneys, choses in action and effects deposited by a member in trust with the veterans facility and unclaimed at the death of the member, dying intestate, shall be deemed to be the property of the veterans facility. Such property shall be held in trust for 3 years following the death of the depositor, with power to invest the funds and to use the income for the benefit of the members as the council and the commissioner may deem most advisable."

Such property remaining unclaimed 3 years after the death of its depositor shall be deemed to be the property of and subject to the absolute control and disposal of the veterans facility, to be used for such purposes as the council and the commissioner may deem most advisable."

A similar question was previously answered in 1961 by Formal Opinion No. 15 of the Attorney General. At that time an opinion was sought to resolve the apparent conflict between N.J.S.A. 30:6A-11 and N.J.S.A. 2A:37-12. N.J.S.A. 30:6A-11 provided that property of inmates of the New Jersey Home for Disabled Soldiers who had died intestate, and which property had remained unclaimed for 3 years after decedent's death, would escheat to and become the property of the board of managers of the Home. N.J.S.A. 2A:37-12 provided as follows:

"If any person, who at the time of his death, has been or shall have been, the owner of any personal property within this state, and shall have died, or shall die, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, of whatsoever nature the same may be, shall escheat to the state."

The Attorney General concluded that N.J.S.A. 30:6A-11 was impliedly repealed by the enactment of the General Escheat Act, L. 1946, c. 155 to the extent that the statutes were inconsistent.

The State was then informed by various Veterans' groups that if unclaimed funds belonging to veterans were escheated by the State under the general escheat statute, such funds would be deducted from grants by the Federal Government to the Soldiers' Homes. In addition, a hardship would be created by depriving the members of funds which had previously been escheated under N.J.S.A. 30:6A-11, as these funds were a source of revenue by which the inmates of the Soldiers' Homes could be furnished little conveniences for which no appropriate funds were available.

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After this additional information had been brought to the State's attention, it was agreed that either N.J.S.A. 30:6A-11 or N.J.S.A. 2A:37-12 should be amended to permit funds of veterans to remain with the veterans' homes rather than being escheated by the State. To accomplish this, Assembly Bill No. 510 (1962) was prepared. This bill specifically excluded funds of a veteran dying intestate in a veterans' home and not having been survived by any next of kin from the general escheat statutes. The statement attached to the bill provided as follows:

"The purpose of this bill is to provide for the continued escheat for the benefit of inmates at the Soldiers' Homes at Vineland and Menlo Park of certain funds deposited by deceased inmates and to overcome an Attorney General's Opinion that such funds should escheat to the State Treasury under N.J.S. 2A:37-12."

This bill was not passed as it was believed that an administrative escheat by the Soldiers' Homes might be held unconstitutional in view of the statement by the court in *State v. Otis Elevator Co.*, 12 N.J. 1, 18 (1953):

"Finally, it is insisted that the State may escheat personal property administratively without judicial action. With this view we find ourselves in complete disagreement. Court action has been uniformly required in escheat proceedings. . . ."

Although Governor Hughes filed a statement that he was in full agreement with the purpose of Assembly Bill No. 510, the statement indicated that he had allowed the bill to expire by a pocket veto as he was concerned that the bill might fall within the constitutional ban on an administrative escheat suggested by the court in *State v. Otis Elevator Co.*, *supra*.

Thereafter, A-670 (1963) was prepared by Governor's Counsel and the same bill was introduced in 1964 as A-171 and enacted into law as Laws of 1964, c. 90.¹ This statute, which is substantially the same as N.J.S.A. 30:6AA-14, provided that property deposited by an inmate in trust with a soldiers' home shall be deemed to be the property of the home if it is not claimed within three years following decedent's death.

In view of the legislative history of N.J.S.A. 30:6AA-14 discussed *supra*, there can be no question that this statute was enacted to permit funds of a veteran dying intestate in a soldiers' home without next of kin to become the property of the home rather than to be escheated to the State under N.J.S.A. 2A:37-12 or N.J.S.A. 30:4-132. You are therefore advised that unclaimed monies of deceased members of the New Jersey Home for Disabled Soldiers should remain under the control of the Veterans' Facilities Council and the Commissioner of Institutions and Agencies in accordance with N.J.S.A. 30:6AA-14, rather than be transferred to the State Treasurer pursuant to N.J.S.A. 30:4-132 or N.J.S.A. 2A:37-12.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: ROBERT W. DEMPSEY
Deputy Attorney General