



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-087

October 6, 2015

The Honorable Andrea Lea
Auditor of State
500 Woodlane Street, Suite 230
Little Rock, AR 72201-1096

Dear Auditor Lea:

This is my opinion on your questions about the Arkansas Unclaimed Property Act (the "Act"):¹

1. Do state agencies, boards, commissions, and other political subdivisions of the State of Arkansas have a legal obligation to comply with the Act?
2. If the answer is "yes," does the Auditor of State have the statutory authority to enforce the Act in regard to state agencies and other political subdivisions of the State of Arkansas?

RESPONSE

In my opinion, the answer to both your questions is generally "yes."

DISCUSSION

Question 1 – Do state agencies, boards, commissions, and other political subdivisions of the State of Arkansas have a legal obligation to comply with the Act?

¹ Act 850 of 1999, codified as amended at Ark. Code Ann. §§ 18-28-201 to -231 (Repl. 2003, Supp. 2013, Westlaw 2015).

In my opinion, the answer to this question is generally “yes.”

The Act establishes a scheme under which holders of unclaimed property must make a report to the Auditor of State, and deliver the property to the Auditor of State to be held in the State’s custody and safekeeping. State agencies, boards, commissions, and other political subdivisions of the State of Arkansas are generally subject to this Act.

The Act defines “holder” as “a *person* obligated to hold” property for its owner.² The Act defines “person” to include, among others, any “government, governmental subdivision, agency, or instrumentality....”³ It contains a rule about when “property held by a court, government, governmental subdivision, agency, or instrumentality” is deemed abandoned, thus expressly contemplating governments’ participation in the unclaimed-property system. Accordingly, in my opinion, any State agency, board, commission, or political subdivision that holds unclaimed property otherwise subject to the Act is a “person” and a “holder” as defined by the Act, and is generally obligated to comply with the Act.⁴

Question 2 – If the answer is “yes,” does the Auditor of State have the statutory authority to enforce the Act in regard to state agencies and other political subdivisions of the State of Arkansas?

In my opinion, the answer to this question is generally “yes.”

The Act gives you, as Auditor of State (and therefore administrator of the unclaimed-property scheme) certain powers to enforce the Act.⁵ To the extent a governmental entity holds property subject to the Act, it is a “holder” as defined in

² Ark. Code Ann. § 18-28-201(6) (Supp. 2013) (emphasis added).

³ Ark. Code Ann. § 18-28-201(12).

⁴ You have not asked about, and this opinion does not address, any particular governmental entity or office, or type of property. In responding to such a general inquiry, I can offer no assurance that there are no exceptions to the general rule stated. *See, e.g.*, Op. Att’y Gen. 97-107 (opining that “outlawed state warrants” were not subject to the reporting and remittance rules of the version of the Act then in effect).

⁵ *See, e.g.*, Ark. Code Ann. §§ 18-28-219(b) (Repl. 2003) (referring to administrator’s power to maintain action “to enforce this subchapter” against holders), -220 (Repl. 2003) (describing administrator’s powers to require reports from holders and to examine holders’ records), -222 (Repl. 2003) (“administrator may maintain an action . . . to enforce this subchapter”).

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the Act and accordingly is generally subject to your enforcement authority thereunder.

Sincerely,

A handwritten signature in blue ink, appearing to read "LR", is positioned above the printed name "LESLIE RUTLEDGE".

LESLIE RUTLEDGE
Attorney General