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FILE NO. S-478

**COUNTIES:
State's Attorney
Authority to settle
law suits.**

**Honorable Louis R. Bertani
State's Attorney
Will County
Courthouse
Joliet, Illinois 60431**

Dear Mr. Bertani:

I have your recent letter wherein you state:

"The Administrator of a decedent's estate served the Will County State's Attorney's Office with a notice stating that a complaint to enforce an oral contract to make a Will has been filed against the estate. In that there are no known heirs to the estate, the assets in the estate would escheat to the County of Will, State of Illinois had not the complaint been filed.

"The State's Attorney's Office intervened in the case and filed an answer to the complaint. The matter is currently awaiting trial.

Honorable Louis R. Bertani - 2.

"The question has arisen as to the authority of the State's Attorney's Office in conjunction with the Administrator of the estate to settle such a suit if it is determined that the suit has merit. Basically, we are faced with the problem as to whether we can settle the case if in the opinion of our office, the trial court could find for the complainant? This question has to be considered with reference to Chapter 49, Illinois Revised Statutes, 1971, which designates the State's Attorney as having the duty of proceeding against escheated property.

"In light of the above situation, I ask the following question:

Does the State's Attorney's Office have the authority to negotiate a compromised settlement in a suit claiming an oral contract to make a Will if the assets in the estate would escheat to the County being that there are no known heirs of the decedent?"

In my opinion your office has the requisite authority to negotiate a compromised settlement provided there exists a bona fide disputed claim and a good faith belief that the trial court could find for the complainant.

"A municipal corporation holds its property in trust for public uses, and is bound to administer it faithfully, honestly, and justly. Its funds can be used only for corporate purposes. They cannot be diverted

Honorable Louis R. Bertani - 3.

to private use, nor can the municipal authorities or the electors give away the money or the property of the municipality."

People v. Parker,
231 Ill. 478, 480.

The premise of the above quotation continues to be law. However, a distinction must be drawn between giving away property and compromising disputed claims. In Agnew v. Brall, 124 Ill. 312, it was held that the city council could not give away the property of the corporation without consideration nor discharge the debt of a solvent party without payment, where no controversy exists as to its validity, but that it had power to settle disputed claims and pending suits and to compromise doubtful controversies.

In Sackett v. City of Morris, 149 Ill. App. 152, 159, the court noted that the city council had the authority to make any honest compromise of any litigation which had arisen concerning matters wholly within the control of the council.

Section 3 of An Act to revise the law in relation to escheats (Ill. Rev. Stat., 1971, ch. 49, par. 3) provides,

Honorable Louis R. Bertani - 4.

in part, as follows:

"When the State's Attorney of said county shall be informed or have reason to believe that any real estate within his county has escheated to said county * * * it shall be his duty to file an information in behalf of the county in the Circuit Court of said county, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre tenants, and persons claiming such estate, if known, and the fact and circumstances in consequence of which such estate is claimed to have escheated, and alleging that by reason thereof said county has a right by law to such estate. * * *"

Pursuant to said section 3 the State's Attorney is responsible for proceeding against escheated property, thereby placing this matter wholly within the control of your office.

The necessity that a good faith belief that a bona fide dispute exists was illustrated in the early case of Petersburg v. Mappin, 14 Ill. 193. In affirming a decree dismissing a complaint in an action to set aside the compromise settlement of a judgment in favor of a municipal corporation, made as the adverse parties had been about to perfect an appeal, the court said:

"The power to prosecute suits on behalf of the corporation includes the power to settle the same. So the power to defend suits brought against the corporation gives them the same power of adjustment. They may compromise

Honorable Louis R. Bertani - 5.

doubtful controversies to which the corporation is a party, either as plaintiff or defendant. The law vests them with a discretion in such matters, which they are to exercise for the best interests of the corporation. A settlement of an existing controversy, if made in good faith, binds the corporation; but if collusively made it is not obligatory."

Another case illustrating the good faith requirement is People v. Helten, 287 Ill. 225. Officers of the city and town had started suit on the official bonds of the city treasurer and then had compromised for amounts much less than the amounts due, although there was nothing to show that the full amounts could not have been collected. It was held that such compromise had been made without authority and was an unlawful diversion of public money.

In conclusion, therefore, it is my opinion that you have the authority to enter into a compromise settlement, of the case referred to in your letter, as outlined herein.

Very truly yours,

A T T O R N E Y G E N E R A L