

January 26, 2011

OFFICIAL OPINION 2011-2

The Honorable Tim Berry
Auditor of State
200 W. Washington St.
Indianapolis, IN 46204

**RE: Disposition of Uncashed Warrants Issued
By the State Auditor**

Dear Auditor Berry:

You have requested information, in addition to that already provided by *Ind. Att’y Gen. Op. No. 2008-04*,¹ concerning the proper handling of all uncashed warrants issued by the Auditor of State. Specifically, you request our opinion regarding when payments should be distributed to the Abandoned Property Fund.

BRIEF ANSWER

1. The funds represented by uncashed warrants issued by the Auditor of State should be paid over to Indiana's Abandoned Property Fund once they are presumed abandoned unless another controlling statute exists that provides an alternate means for the proper handling of the abandoned funds.
2. When funds represented by uncashed warrants are held by the state, they are presumed to be abandoned and are subject to the Indiana Unclaimed Property Act when the owner of the funds fails to communicate in writing with the state within one year after the funds are distributable.

ANALYSIS

The purpose of the Indiana Unclaimed Property Act (IUPA) is to place abandoned property into the custody and safekeeping of the State for possible recovery by the owner. Ind. Code Chpt. 32-34-1. The IUPA's provisions set out the process by which "holders" must turn over applicable property to the Abandoned Property Fund administered by the Office of the Attorney General and kept by the Treasurer of State.

The language of the IUPA is clear in establishing state agencies as holders. The IUPA defines a "holder" as "a person obligated to deliver or pay to the owner property that is subject to this chapter." Ind. Code § 32-34-1-8. Its definition of "person" includes "a government, a governmental subdivision, agency, or instrumentality " Ind. Code § 32-34-1-15. Barring a statute to the contrary, the property represented by a warrant is subject to the IUPA. The IUPA defines property as "an interest in intangible personal property, except an unliquidated claim, and all income or

¹ 2008 *Ind. Att’y Gen. Op. No. 4* is available at <http://www.in.gov/attorneygeneral/files/OfficialOpinion2008-4.pdf>.

increment derived from the interest, including an interest that is referred to as or evidenced by: (I) money, a check, a draft, a deposit, an interest, or a dividend" Ind. Code § 32-34-1-17. Additionally, while the IUPA excludes some types of intangible property, there is no exception for state-held property. Ind. Code § 32-34-1-1(b). Furthermore, outstanding or unclaimed warrants are expressly understood to be property that "must be reported and delivered to the attorney general" under the rules adopted to implement the IUPA. 10 IAC 1.5-3-6.

The Indiana Warrant Cancellation Statute (IWCS) requires that state agencies make a list of warrants that have been outstanding for more than two years. Ind. Code Chpt. 4-10-10. At that time, the funds represented by those warrants are transmitted into a cancelled warrant holding account. Ind. Code § 4-10-10-5. After having been outstanding for seven years, the amount is returned to the fund from which they were originally drawn or the general fund if the original fund no longer exists. *Id.* In two earlier opinions, we concluded that the IUP A "supersedes those earlier sections of the Indiana Code dealing with the disposition of unclaimed warrants and or checks held by the state." 1975 *Ind. Att'y Gen. Op.* No. 19 (opining on the Uniform Disposition of Unclaimed Property Act, now replaced by the IUPA); and 2008 *Ind. Att'y Gen. Op.* No.4. (agreeing with the analysis set forth in the 1975 opinion).

Our legislature may enact statutes to exempt certain forms of property from the requirements of the IUP A in determining when or if specific types of property are subject to custody by the State. Our previous opinion at 2008 *Ind. Att'y Gen. Op.* No.4 recognized one such statute concerning abandoned inmate trust funds that are controlled by the specific provisions of Ind. Code § 4-24-6-5 and not by the IUPA. We have not found any other exceptions from the IUPA, although we cannot, after a brief review of Indiana statutes, rule out the possibility of other statutory exceptions from the IUPA. We expect that the abandoned status of funds may be affected by the source of the funds, as with funds from federal agencies whose disposition may be controlled by federal law. It is beyond the scope of this advisory opinion to catalog all possible exceptions to the IUPA.

Your second question concerned when payments should be turned over to the Abandoned Property Fund. The IUPA is unambiguous as to when property held by the state becomes' abandoned. Property held by the State is presumed abandoned if the property remains unclaimed and the owner has not communicated in writing to the holder regarding the property within "one year after the property becomes distributable." Ind. Code § 32-34-1-20(c)(7). In the case of warrants issued by the state, that period would be one year after the warrant is distributable or payable according to the terms of the instrument.

"Distributable" is not defined in the IUPA. Words not defined by statute should be given their plain and ordinary meaning. See, *e.g.*, *600 Land, Inc. v. Metropolitan Bd. of Zoning Appeals of Marion County*, 889 N.E.2d 305 (Ind. 2008). Additionally, English dictionaries may be used in determining plain meaning. *Flying J., Inc. v. City of New Haven Bd. of Zoning Appeals*, 855 N.E.2d 1035 (Ind. Ct. App. 2006). The word "distributable" is a combination of the word "distribute" and the suffix "-able." "Distribute" means "to give out or deliver," and "able" means "capable of." Merriam-Webster Online Dictionary, <http://www.merriamwebster.com/dictionary> (last visited July 19, 2010). Therefore, "distributable" means capable of being given out or delivered.

Warrants are "payment instruments issued by the state to the claimant." 10 IAC 1.5-1-11. Therefore, the warrant is the actual device used to distribute the funds that it represents. In the normal situation, the funds represented by a warrant are capable of being delivered at the time the warrant is issued. A warrant that, according to its terms, is payable immediately is proof that the property is distributable because the owner can take possession upon presentation of the warrant.

You mentioned in your request that, per Ind. Code § 4-10-10-1, warrants are valid for a period of two years. This is not in conflict with the IUPA even when the funds have already been transferred to the Abandoned Property Fund. Ind. Code § 32-34-1-29(c) provides that "[a] holder who has paid money to the attorney general under this chapter may later make payment to a person who, in the opinion of the holder, appears to be entitled to the payment. The attorney general shall promptly reimburse the holder for the payment without imposing a fee or other charge if the holder files proof of payment and proof that the payee was entitled to the payment." Therefore, the Auditor may still issue warrants that are valid for two years and turn over property presumed abandoned one year after warrant issuance since the funds will be returned if the warrant is honored.

Our legislature may wish to resolve the appearance of disparate treatment of warrants under the IUPA and the IWCS by adopting express language to do so. At least one state has resolved confusion over the proper handling of warrant by enacting laws controlling their treatment under unclaimed property laws. Arizona, for example, provides that "[m]onies held for the payment of warrants by a state agency that remain unclaimed by the owner at the time of the void date printed on the face of the warrant are presumed abandoned." *Ariz. Rev. Stats.* § 44-301 (A)(1).²

CONCLUSION

All funds represented by uncashed warrants issued by the Auditor of State should be paid over to the Abandoned Property Fund when they are presumed abandoned unless a more specific statute exists that provides for the fund's proper handling.

Funds represented by uncashed warrants issued by the Auditor of State are presumed to be abandoned and are subject to the Indiana Unclaimed Property Act when the owner of the funds fails to communicate in writing with the state within one year after the funds are distributable.

Sincerely,

Gregory F. Zoeller
Attorney General

Philip Thompson
Deputy Attorney General

² The legislature repealed Ind. Code Chpt. 4-10-10 in 2014. See Pub. L. 113-2014. Sec. 2.