

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 131

TO: R. F. Martin, Director

FROM: R. B. Billings, Attorney

RE: Executors and Administrators; Escheats; Disposition of Unemployment Compensation Benefits Where No Administrator Has Qualified and G. S. 28-68 Does Not Apply

Interpretation No. 44 which is an opinion of the Attorney General dated June 24, 1943, dealing with the above subject, is obsolete with respect to the discussion therein of the disposition of "unemployment compensation benefits" accruing before the death of a claimant when no personal representative has been appointed for the estate of the claimant. The above-referred to opinion of the Attorney General discusses C. S. Section 65(a). C. S. Section 65(a) has been superseded by G. S. 28-68, and this is a statewide statute. The old provision referred to in the opinion of the Attorney General was not a statewide statute, and the amount owing to the deceased was limited under that statute to \$300.00. Under the new statute, the amount is not to exceed \$500.00. The opinion also refers to whether any benefits which might have been held as the result of an executor or administrator to qualify would escheat to the University of North Carolina. The part of the opinion relating to escheats is still correct. It is suggested that the above interpretation be revised as follows, and it is submitted for the Commission's approval:

The question has arisen as to what is the proper disposition of unemployment insurance benefits which have accrued before the death of a claimant when no personal representative has been appointed for the estate of the claimant. Under G. S. 28-68 where the amount of payments due a deceased does not exceed \$500.00, payment may be made to the Clerk of the Superior Court of the county in which the claimant lived, and disposition may be made as provided in the statute.

Upon the death of a person, title to his personal property passes to his executor or administrator. The next-of-kin of a deceased person have no right to his personal assets until there has been an administration of his estate in the manner provided by law. If no such person is qualified, Section 28-68 now provides that these payments not to exceed \$500.00 may be paid to the Clerk of Superior Court. It may be that the total amount of debts owing to a deceased may exceed \$500.00 or the amount of benefit payments due to the deceased may exceed \$500.00, which would prevent the Clerk from having the authority to distribute the money under the section referred to. In this case the Commission would have to pay the accrued amount to an executor

or administrator; and where no executor or administrator qualifies, the Commission would be justified in withholding payments of benefits indefinitely until an executor or administrator has been appointed.

With respect to whether or not these accrued payments would escheat to the University of North Carolina, we refer to the language of the Attorney General in his opinion of June 24, 1943, reading as follows:

“I do not think that benefits which have been held as a result of failure of an executor or administrator to qualify would escheat to the University of North Carolina. The only two statutes under which the funds might be considered to escheat are C.S., Section 5786, and Chapter 22 of the Public Laws of 1939, which is codified as N. C. Code, Ann. (Michie, 1939), Section 5786 (2).

“This office has construed Section 5786 as being inapplicable to unclaimed funds in the hands of the State Treasurer and, of course, the State Treasurer is the custodian of the Unemployment Compensation Fund. The only provisions for escheat of funds in the hands of the State Treasurer contained in Section 5786 (2) are those relating to unclaimed funds of insolvent banks and those moneys in the hands of the Treasurer represented by State warrants. These provisions would probably be construed to apply only to funds held by the State Treasurer on the date of the ratification of the statute in 1939, but, in any event, they would not apply to the unpaid benefits which you mention, for such benefits are not represented by State warrants.

“In addition to the fact that the escheat statutes do not appear to be broad enough to cover the funds which you mention, I am of the opinion that these funds would not escheat for the reason that other provision was made for their disposition in the Unemployment Compensation Act. In N.C. Code, Ann. (Michie, 1939), Section 8052 (9), it is provided that the Commission shall requisition from the State’s account in the unemployment trust fund an amount estimated to be necessary for the payment of benefits for a reasonable future period. The funds so requisitioned constitute the benefit account from which benefits are paid. The statute provides that ‘Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during the succeeding periods, or, in the discretion of the Commission, shall be deposited with the Secretary of the Treasury of the United States of America, to the

credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.'

"In my opinion, this express provision indicates the intent of the Legislature that unclaimed or unpaid benefits of the type which you mention in your letter should not escheat, but that the funds should be held to the credit of the Unemployment Compensation Commission"

Adopted as an official Interpretation of the Commission on February 28, 1956.
(Cancels and replaces Interpretation No. 44, dated June 24, 1943.)