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The Honorable A. James Manchin
Treasurer, State of West Virginia
Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Manchin:

You have requested an opinion interpretation of W.Va. Code 36-8-2(f), as it relates to the disposition by West Virginia banks of funds or other personal property remaining in a safe-deposit box, where the lessee thereof has defaulted on the rentals required by the lease or other applicable agreement. This opinion was requested of you by the West Virginia Bankers Association, a trade association of commercial banks, who have also asked this office to approve a proposed model provision for safe-deposit box rental contracts. Specifically, your questions are as follows:

First, it appears to be the position of the association that once the lessee fails to pay the rentals due under a rental contract, the bank may open the safe-deposit box and sell its contents and apply the proceeds to the expenses due the bank. It is suggested that the authority to sell the contents comes from West Virginia Code [Section] 36-8-2(F) which states "or any surplus amounts arising from the sale thereof pursuant to law."

But this area of the Code prescribes procedures to be followed by the TREASURY in the administration of abandoned property. Therefore, we believe only the Treasury is authorized to sell items contained in a safe deposit box reported by a bank.

A second concern we have with respect to the proposed safe-deposit contract involves any rent or charges due the bank by the lessee. If our position relating to the sale of items in a safe-deposit box is correct, it might be possible for the bank to submit a request to our office for payment of these expenses and for our office to pay out of the proceeds from the sale of the safe-deposit box contents.

The Uniform Disposition of Unclaimed Property Act, W.Va. Code 36-8-1 et seq., generally prescribes procedures for handling abandoned property in the State of West Virginia. However, before property in the hands of a bank may be considered "abandoned" within the meaning of the Act, it must meet one of the definitions set forth in Section 36-8-2, which provides, in pertinent part:

The following property held or owing by a banking or financial organization is presumed abandoned:

. . . .

(f) Any funds or other personal property, tangible or intangible, removed from a safe-deposit box or any other safekeeping repository in this State on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired. (Emphasis supplied.)

The above language obviously contemplates the sale of the contents of a safe-deposit box prior to delivery to the Treasurer under other provisions of the Act, as "any surplus amounts arising from the sale thereof" could not be "held" by the bank unless the bank conducted the sale. In addition, Code 36-8-2(g) appears to allow the imposition of such charges by a holder pursuant to a valid contract, as it provides in part:

No holder may impose with respect to property described in this section any charges due to dormancy or inactivity . . . unless there is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose those charges (Emphasis supplied.)

Finally, W.Va. Code 36-8-14 provides:

The payment or delivery of property to the State treasurer by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the owner . . . by reason of such delivery or payment, regardless of whether such property is in fact and in law abandoned property (Emphasis supplied.)

Under this provision, once a bank turns over the contents of a safe-deposit box to the Treasurer as abandoned property, its contractual rights (and obligations) vis-a-vis the owner are extinguished. Therefore, the Treasurer would be without legal authority to honor any request from the bank for payment of rent or charges under such a contract from State funds. In addition,

because of the indemnity provisions of section 36-8-14, if he were to honor such a request the Treasurer could be placed in the unfortunate position of defending the bank's contract against a suit by the rightful owner to recover his property.

Accordingly, it is the opinion of this office that if a bank has an enforceable written contract with the owner of property held in a safe-deposit box which authorizes the bank to sell the contents thereof upon non-payment of rent and apply the proceeds toward the rentals due under the contract, the bank may do so without violating the provisions of the Uniform Disposition of Unclaimed Property Act, W.Va. Code 36-8-1 et seq. Any surplus amounts arising from such a sale, if unclaimed by the owner for more than seven years, must then be turned over to the Treasurer for disposition according to the Act.

As the Attorney General is not empowered to furnish opinions to private individuals or organizations, we expressly decline to pass upon the sufficiency of the contract language submitted by the trade association, or to prescribe the terms or conditions under which such a sale could occur.

Very truly yours,

CHARLES G. BROWN
ATTORNEY GENERAL



By DAWN E. WARFIELD
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