

**THE HONORABLE JOHN BEL EDWARDS,  
IN HIS OFFICIAL CAPACITY AS GOVERNOR  
OF THE STATE OF LOUISIANA**

**NUMBER 693,729; SECTION 26**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**VERSUS**

**JOHN SCHRODER, IN HIS OFFICIAL  
CAPACITY AS TREASURER OF THE  
STATE OF LOUISIANA AND AS  
ADMINISTRATOR OF THE UNCLAIMED  
PROPERTY FUND**

**PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

**RULING ON PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION  
AND WRIT OF MANDAMUS**

This matter came up for hearing on the 2<sup>nd</sup> day of March, 2020 on exceptions filed by Defendant, John Schroder, in his official capacity as Treasurer of the State of Louisiana and as Administrator of the Unclaimed Property Fund (“Treasurer”) and a Petition for Writ of Mandamus filed by Plaintiff, John Bel Edwards, in his official capacity as Governor of the State of Louisiana (“Governor”). Appearing in court were Jimmy R. Faircloth and Mary Katherine Price, counsel for the Treasurer, and Matthew F. Block and John Walsh, counsel for the Governor. After argument of counsel, the court overruled the Dilatory Exception of Improper Use of a Summary Proceeding and took under advisement its ruling on the Peremptory Exception of No Cause of Action. Thereafter, the Governor and Treasurer offered both testimonial and documentary evidence as to the propriety necessitating the issuance of a Writ of Mandamus. After argument of counsel, the court deferred its ruling in order to consider the exhibits introduced during the hearing.

***FACTUAL HISTORY***

***a) Historical Perspective Before 2019:***

The Uniform Disposition of Unclaimed Property Act<sup>1</sup> (“UDUP”) was enacted by the Louisiana Legislature in 1972 as La. R.S. 9:151 to 9:182. While the UDUP has undergone several modifications over the years, it has continued to utilize a custodial scheme whereby

unclaimed property should benefit the general public rather than holders of abandoned property.<sup>2</sup> While one purpose of this legislation is to protect the interest of the missing owner, the primary motivation influencing the UDUP is the procreation of revenue for the state.

The incentive underpinning the enactment of UDUP has been demonstrated to be true. During its 46-year history, the Department of the Treasury has collected 1.3 billion dollars in unclaimed property, from which it remitted 463 million dollars in claims. Each year the amount collected from unclaimed property vastly surpasses the aggregate paid by the Department of the Treasury in claims, audit fees and administrative expenses. Generally, the amount collected is double the amount remitted to the owners of property. For example, in fiscal year 2016, the Department of the Treasury collected 88 million dollars in unclaimed property and returned only 35 million dollars on claims. In fiscal year 2017, the Department of the Treasury received 76 million dollars in unclaimed property and paid only 27 million dollars in claims. This same trend materialized in fiscal year 2018 when the Treasurer received 85 million dollars from which only 30.5 million dollars was returned to pay claims.

Where did the remaining balance of unclaimed property go? Revenue from excess unclaimed property has been utilized to help fund appropriations by the state legislature for 46 years. Throughout the history of the UDUP, whatever money was leftover (the excess) at the end of the fiscal year - after the payment of claims, audit fees and administrative expenses - was transferred by the Treasurer through the Bond Security and Redemption Fund<sup>3</sup> ("BSRF") and into the state general fund at some point between July 1 and August 14, colloquially referred to as the '13<sup>th</sup> Period.' With certain exceptions, before money can be deposited into the state general fund it must first flow through BSRF. All monies deposited to the BSRF are utilized on a first priority basis to satisfy the principal and interest requirements of the state's bonded indebtedness without the necessity of appropriation by the legislature. No money actually remains in the BSRF.

Mr. Gregory B. Albright, the Chief Economist of the Legislative Fiscal Office for the

used excess unclaimed property as a revenue source in its acts of appropriation because it relies on the “official forecast” prepared by the Revenue Estimating Conference,<sup>4</sup> (“REC”) which, in part, projects the amount of excess unclaimed property that the Treasurer will deposit into the state general fund. The forecast prepared by the REC embodies a conservative model to minimize the necessity of midyear cutbacks resulting from insufficient revenue in the state general fund. The Legislature is authorized to spend up to 100% of the adopted revenue forecast for each fiscal year. Surprisingly, excepting a few thousand dollars, this is exactly what the legislature does every fiscal year. It is uncontested that in both fiscal year 2019 and 2020, as in all previous fiscal years, the REC’s official forecast included money derived and collected from excess unclaimed property that it anticipated the Treasurer would transfer to the state general fund.

***b) Present Conflict:***

In August 2019, the Treasurer decided to change history when he refused to transfer excess unclaimed property funds to the state general fund vis-a-vis the BSRF. Excluding 15 million dollars that was transferred through the BSRF into the I-49 Leverage Fund and administrative costs, the Treasurer directed that the excess balance containing 7.3 million dollars remain in escrow ostensibly to pay future claims. As a consequence of the Treasurer’s longstanding policy reversal, the appropriation bill that had already been passed by the Legislature no longer aligned with the official forecast of the REC which had included that source of revenue. The Treasurer’s unwavering position extended into fiscal year 2020 as reflected in his resolve blocking the transfer of 25.2 million dollars in excess unclaimed property to the state general fund. It is unchallenged that the Legislature appropriated nearly 100% of all revenue that the REC estimated would encompass the state general fund in both fiscal year 2019 and 2020. At present, the Office of the Treasury has approximately 64 million dollars in excess unclaimed property sequestered away in escrow - to pay claims.

Ms. Laura Lapez, the chief financial officer with the Office of the Treasury for the past

Lapez confirmed that, prior to fiscal year 2019, it was her practice to transfer excess unclaimed property to the BSRF for use in the state general fund at the end of every fiscal year.

Acknowledging that the Treasurer had instituted a new policy whereby he now controls excess unclaimed property, when questioned whether La. R.S. 9:165 permitted such a use of these funds, Ms. Lapez responded, “the statute permits the administrator to retain “*at least \$500,000 dollars*” to pay claims. Ms. Lapez admitted that the current offering statement prepared by the Department of the Treasury to bond holders, which provides pertinently:

“Abandoned and unclaimed property remaining after full faith and credit obligations of the state, after payment of claims, after payment of auditor fees and administrative expenses, and after deposit of \$15 million dollars into the unclaimed property leverage fund, are deposited into the state’s general fund,”

did not reflect the current practice of the Treasurer. Ms. Lapez agreed that the Department of the Treasury had not amended its offering statement to reflect the changes instituted by the Treasurer in 2019.

### ***STATUTORY INTERPRETATION***

The issue before this court presents a question of the proper interpretation of La. Const. Art. VII, §9 and La. R.S. 9:165. The function of statutory interpretation and the construction to be given to legislative acts rests with the judicial branch of government.<sup>5</sup> The starting point in the interpretation of any statute is the language of the statute itself.<sup>6</sup> When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, and its letter shall not be disregarded in search of the intent of the legislature or under the pretext of pursuing its spirit.<sup>7</sup> A statute shall be construed to give meaning to the plain language of the statute.<sup>8</sup>

In *Barrilleaux v. NPC, Inc.*, 730 So.2d 1062, 1064-65 (La. App. 1 Cir. 4/1/99), writ denied, 743 So.2d 672 (La. 5/28/99), the First Circuit further outlined the jurisprudence regarding statutory interpretation as follows:

When interpreting a law, the court should give it the meaning the lawmaker intended. It will not be presumed that the legislature intended for any part or provision of the law to be meaningless or useless. It is presumed that every word, sentence, or provision in the

law was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provisions were used. The meaning of a statute is to be interpreted by looking to all the sections taken together so that no section, clause, sentence or word becomes superfluous or meaningless.

Where it is possible to do so, it is the duty of the courts in the interpretation of laws to adopt a construction of the provision in question which harmonizes and reconciles it with other provisions. The legislature is presumed to have enacted each such statute with deliberation and with full knowledge of all existing laws on the same subject. The meaning and intent of the statutory provision is to be determined by a consideration of the statute in its entirety and all other laws on the same subject matter and a construction should be placed on the provision in question which is consistent with the express terms of the statute and with the obvious intent of the legislature in enacting it. It is reasonable to conclude that the legislature, in passing a statute, did not intend to abrogate any prior law relating to the same subject matter.

#### ***APPLICABLE LAW***

With these established principles of statutory interpretation in mind, the court turns its attention to La. Const. Art. VII, §9, entitled 'State Funds,' which states, in pertinent part:

(A) Deposit in State Treasury. *All money received by the state* or by any state board, agency, or commission *shall* be deposited immediately upon receipt in the state treasury....

(B) Bond Security and Redemption Fund. Subject to contractual obligations existing on the effective date of this constitution, *all state money* deposited in the state treasury *shall* be credited to a special fund designated as the Bond Security and Redemption Fund..... In each fiscal year an amount is allocated from the bond security and redemption fund sufficient to pay all obligations which are secured by the full faith and credit of the state and which become due and payable within the current fiscal year, including principal, interest, premiums, sinking or reserve fund, and other requirements. *Thereafter, except as otherwise provided by law, money remaining in the fund shall be credited to the state general fund.* (Emphasis supplied.)

and La. R.S. 9:165, entitled, 'Deposit of funds,' which provides in pertinent part:

A. Except as otherwise provided by this Section, *the administrator shall promptly deposit in the Bond Security and Redemption Fund of this state all funds received under this Chapter*, including the proceeds from the sale of abandoned property under R.S. 9:164. The administrator shall retain in a separate trust fund at least five hundred thousand dollars from which the administrator shall pay claims duly allowed. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and, with respect to each policy or contract listed in the report of an insurance company, its number, the name of the company, and the amount due.

B. The administrator may deduct an amount equal to the costs incurred for authorized external auditing from total gross collections during any fiscal year, and an amount not to exceed seven percent of the total gross collections during any fiscal year for the

### ***PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION***

The peremptory exception raising the exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy under the facts alleged.<sup>9</sup> Generally, the exception is triable solely on the face of the petition and any attached documents, and no evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action.<sup>10</sup> The court must accept all factual allegations of the petition as true and maintain the exception only if no remedy is afforded under the allegations asserted.<sup>11</sup>

The burden of establishing that a petition fails to state a cause of action is on the mover. Because the exception of no cause of action raises a question of law and the trial court's decision is based solely on the sufficiency of the petition, review of the trial court's ruling on the exception is *de novo*.<sup>12</sup> The pertinent inquiry is whether, viewed in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief.<sup>13</sup>

### ***MANDAMUS***

Mandamus, codified in La. C.C.P. art. 3862, et seq., is an extraordinary remedy to be applied where ordinary means fail to afford adequate relief.<sup>14</sup> The Louisiana Supreme Court has routinely held that the only circumstances under which courts may issue a Writ of Mandamus is where the actions sought to be performed by the public officer are purely ministerial in nature.<sup>15</sup> A ministerial duty, the performance of which may be required of the head of a department by

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<sup>9</sup> *Tracer Security Services, Inc. v. Ledet*, 259 So.3d 353, 355 (La. App. 1 Cir. 9/24/18)

<sup>10</sup> La. C.C.P. art. 931; *Paulsell v. State, Department of Transportation and Development*, 112 So.3d 856, 864 (La. App. 1 Cir. 12/28/12)

judicial process, is one in which nothing is left to discretion.<sup>16</sup> A ministerial duty is a simple, definite duty arising under conditions admitted or proved to exist and imposed by law.<sup>17</sup>

It is well settled that mandamus will lie to compel performance of prescribed duties that are purely ministerial and in which no element of discretion is left to the public officer. There must be a clear and specific legal duty which ought to and can be performed. A ministerial duty is one that is so clear and specific that no element of discretion can be exercised in its performance; if a duty requires the exercise of judgment and discretion by the public officer, it is not ministerial for purposes of a cause of action for mandamus.<sup>18</sup>

#### ***CONTENTIONS:***

The Governor argues that the Treasurer lacks the discretion to hold excess unclaimed property funds in escrow. Citing the language, "*all funds received under this chapter,*" contained in La. R.S. 9:165, the Governor contends that this default language creates a ministerial duty requiring the Treasurer, as Administrator of the Unclaimed Property Program, transfer excess unclaimed property into the BSRF. The Governor asserts that the language "*all funds*" cannot be interpreted to mean "*only certain funds.*"

While it is true that La. R.S. 9:165 requires the Treasurer "*retain in a separate trust fund at least five hundred thousand dollars from which the administrator shall pay claims duly allowed,*" the Governor emphasizes that the \$64 million dollars currently held in escrow will never be used to pay claims which is why it is characterized as excess. The action taken by the Treasurer, the Governor maintains, is not a permitted use contemplated by La. R.S. 9:165.

In contrast, the Treasurer argues that the Governor has failed to cite any statute which compels him to move excess unclaimed property funds into the BSRF and then into the state general fund. Citing the language in La. R.S. 9:165, "*Except as otherwise provided by this Section,*" the Treasurer argues that the custodial system adopted by the Legislature contains a plethora of examples wherein discretion is given to him regarding the administration of the program. The Treasurer insists that, because he has discretion over the administration of this

The Treasurer maintains that his decision to hold excess unclaimed property in escrow is authorized under the law. The first exception set forth in La. R.S. 9:165 grants the Treasurer the right to retain “*at least*” \$500 thousand dollars for the payment of claims. This statutory language necessarily implies that the Treasurer has discretion to retain more than the stated amount. Noting that the number of claims spiked once he took office from 26,467 in 2017 to 45,000 in 2018, the Treasurer insists that his decision to retain excess unclaimed property in escrow was entirely appropriate and reasonable. The Treasurer submits that the Governor, rather than asking this court to issue an order compelling the Treasurer to do what the law requires, is instead seeking an order telling the Treasurer what he *should* do based on historical practices and generalizations.

Lastly, with reference to La. Const. Art. VII, §9, the Treasurer claims that, while all money from excess unclaimed property is being deposited into the state as directed in subpart (A), the requirement in subpart (B) that *all state money* be credited to a special fund designated as the Bond Security and Redemption Fund does not apply since unclaimed property is custodial and not state money. In response, the Governor notes that the Legislature, by placing the default language in La. R.S. 9:165, has indicated that unclaimed property revenue is in fact state money. Additionally, the fact that excess unclaimed revenue has been included as a revenue source in acts of appropriation in every fiscal year since the programs inception evidences that the legislature understands this money to be state money. While the state has an obligation to pay property owners,<sup>19</sup> the state enjoys the use of that money.

### ***ANALYSIS***

It is clear that the Legislature intended excess unclaimed property would move from Treasury to the BSRF and into the state general fund. This is true because each and every fiscal year the Legislature has passed a budget which included excess unclaimed revenue that the REC projected would be deposited into the state general fund by the Treasurer. Furthermore, and without exception, every person who has been honored to hold the title Treasurer for the State of



The Treasurer has argued that the words “*at least*” contained in La. R.S. 9:165, which require he retain “*in a separate trust fund at least five hundred thousand dollars from which the administrator shall pay claims duly allowed,*” permits him to hold in escrow all excess unclaimed property. The court disagrees, finding that this statutory interpretation leads to absurd consequences.<sup>20</sup> Such an interpretation would render moot the requirement that “all funds” received be deposited in the BSRF. Furthermore, the court takes cognizance of the fact that the Legislature, in Act No. 10 of the 2019 Regular Session, and in every yearly appropriation bill prior thereto, confirmed excess unclaimed property to be state money when it utilized this revenue source in its appropriations.

Observing that Louisiana adopted a custodial scheme for handling certain types of abandoned property from which the state receives the use of the unclaimed property, and any income it may produce, pending its reclamation by the missing owner, the Treasurer decision to stockpile millions of dollars into something akin to a superfund produces no benefit to the public. If anything, the Treasurer’s action could harm the public should the legislature be required to make midyear budget cuts as a result of this loss in revenue.

Nor does the court find persuasive the Treasurer’s argument that excess unclaimed property is custodial and not state money as a basis supporting his retention of these funds in escrow, citing La. Const. Art. VII, §9. This argument is unsound as it fails to consider the clear language contained in La. R.S. 9:165, requiring all money that the Treasurer receive from unclaimed property be deposited into the BSRF. Reading this statutory provision, *in pari materia*, with La. Const. Art. VII, §9(B), which states that money remaining in BSRF “*shall be credited to the state general fund,*” it is clear that unclaimed property is to be treated as state money.

Understanding that the fundamental duty of this court is “to give effect to the legislature’s intent,”<sup>21</sup> and realizing that La. R.S. 9:165 must be applied and interpreted in a manner which is consistent with logic and the presumed fair purpose and intention of the

interpretation that makes any part superfluous or meaningless, it is clear that the Treasurer has a ministerial duty to transfer excess unclaimed property through the BSRF and into the state general fund. Determining that a ministerial duty exists, the court finds that the Governor's Petition for Writ of Mandamus states a cause of action.


For all of the above reasons and considerations;

**IT IS HEREBY ORDERED** that the Peremptory Exception of No Cause of Action filed by Defendant, John Schroder, in his official capacity as Treasurer of the State of Louisiana and as Administrator of the Unclaimed Property Fund, be, and the same is hereby, overruled.

**IT IS FURTHER ORDERED** that the Petition for Writ of Mandamus filed by Plaintiff, John Bel Edwards, in his official capacity as Governor of the State of Louisiana, be, and the same is hereby granted. The court orders Defendant, John Schroder, in his official capacity as Treasurer of the State of Louisiana and as Administrator of the Unclaimed Property Fund, after compliance with the requirements of La. Const. Art. VII, §9(B) relative to the Bond Security and Redemption Fund, to immediately transfer into the state general fund \$7.3 million dollars in excess unclaimed property held in escrow for fiscal year 2019 and \$25.2 million dollars in excess unclaimed property held in escrow for fiscal year 2020.

**IT IS FURTHER ORDERED** that judgment reflecting this ruling, upon its submission and signature by the court, shall be designated as a final judgment for purposes of appeal.

**THIS DONE, READ AND SIGNED** in chambers at Baton Rouge, Louisiana, this 26<sup>th</sup> day of May, 2020.

  
Richard "Chip" Moore, III  
Judge, 19<sup>th</sup> Judicial District Court  
Parish of East Baton Rouge  
State of Louisiana

I hereby certify that on this day a notice of the above order was mailed by me, with sufficient

*Handwritten notes:* N. D. Faircloth No. 3