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ATTORNEY GENERAL

STATE OF ILLINOIS

SPRINGFIELD

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FILE NO. S-1409

**DECEDENTS' ESTATES:
Issuance of Replacement Warrants
to Heirs of Small Estates**

**Honorable Roland W. Burris
Comptroller
Room 201, State House
Springfield, Illinois 62706**

**Daniel J. Lengkos
Acting Director of Revenue
Post Office Box 3681
Springfield, Illinois 62708**

Gentlemen:

In response to the joint request of the prior Comptroller and the Acting Director of Revenue as to whether the Comptroller may issue a replacement warrant to heirs or legatees who have executed a small estate affidavit and requested a replacement for a warrant issued pursuant to the Senior Citizens and Disabled Persons Property Tax Relief Act, it is my opinion that he may.

Section 10 of the State Comptroller Act (Ill. Rev. Stat. 1977, ch. 15, par. 210.10) provides that:

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"If any comptroller's warrant is lost, mislaid or destroyed, or becomes void after issuance, so that it cannot be presented for payment by the person entitled thereto, the comptroller * * * may issue a replacement warrant to the person entitled thereto * * *. Only the person entitled to the original warrant, or his heirs or legal representatives, or a third party to whom it was properly negotiated or the heirs or legal representatives of such party, may request a replacement warrant.

* * *

(Emphasis added.)

Section 5(b) of the Senior Citizens and Disabled Persons Property Tax Relief Act (Ill. Rev. Stat. 1977, ch. 67 1/2, par. 405 (b)), however, provides:

"The right to file a claim under this Act shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. If a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to his legal representative. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if an executor or administrator is not appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the State." (Emphasis added.)

Section 5 thus appears to restrict payment of warrants issued under the Senior Citizens and Disabled Persons Property Tax Relief Act to legal representatives, with no mention made of payment to heirs.

There is a third provision that has a bearing on this issue. It is article 25-1 of the Probate Act (Ill. Rev. Stat. 1977, ch. 110 1/2, par. 25-1), which pertains to small estates. The

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statute provides that upon presentation of an affidavit properly executed by an heir or legatee of the decedent:

* * * any person or corporation indebted to or holding personal estate of a decedent or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right * * *

* * *

* * * shall pay the indebtedness or deliver the personal estate or transfer or issue the evidence of interest, indebtedness, property or right * * *

* * *

* * * Upon the payment, delivery, transfer or issuance pursuant to the affidavit, the person or corporation is released to the same extent as if the payment, delivery, transfer or issuance had been made to the legally qualified representative of the decedent and is not required to see to the application or disposition of the property or to inquire into the truth of any statement in the affidavit but each person to whom a payment, delivery, transfer or issuance is made is answerable therefor to any person having a prior right and is accountable to any representative of the decedent thereafter appointed." (Emphasis added.)

The intent of the General Assembly in including this separate article was to simplify and expedite the handling of small estates. To that end, section 25-1 provides that estates of less than a specified value that meet the other requirements of the statute need not have a court-appointed representative in order to be closed or administered. In the place of the representative, heirs or legatees who file an affidavit setting forth certain facts are entitled to receive, on behalf of the estate, payments

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or transfers of personalty made in reliance on the affidavits. Such payments are treated as if they had been made to a representative.

The section on its face does not include payments by the State; its language refers only to transfers made by "any person or corporation". In light of the legislative intent to ease the administrative burden on small estates, however, and given the power of the Comptroller under section 10 of the State Comptroller Act to issue replacement warrants to heirs, the section is properly read to include the State among the transferors whose payments to heirs have the same effect as payments to representatives. The Comptroller can thus issue replacement warrants to heirs without violating the provisions of section 5(b) of the Senior Citizens and Disabled Persons Property Tax Relief Act because under these circumstances, payments to heirs are equivalent to payments to legal representatives.

Accordingly, I am of the opinion that the Comptroller may issue a replacement warrant pursuant to a request by an affiant under section 25-1 of the Probate Act.

Very truly yours,

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