

#26

8/24/67

Memorandum 67-48

Subject: Study 26 - Escheat

Attached to this memorandum are two copies of the recommendation relating to escheat. You will note that this recommendation is set in type and is ready to print. We request that you authorize the printing of the recommendation. The attached recommendation incorporates revisions suggested by those Commissioners who reviewed it before it was sent to the printer.

You will recall that a tentative recommendation on this subject was distributed for comment, the comments were reviewed, a revised tentative recommendation was prepared, and the revised tentative recommendation was distributed for comment. The comments received on the second distribution are attached as exhibits to this memorandum. The staff took these comments into account in preparing the version of the recommendation that we sent to you for comment before we sent it to the printer. This version was revised in light of the various revisions suggested by the Commissioners and then sent to the printer. The attached recommendation is the result. We plan to proofread the attached recommendation and to check all citations for form and substance before we print it. However, we have prepared it for your review and are sending it to you now so that you will have the maximum amount of time within which to review it.

We note below the significant changes that have been made in the last version of the recommendation we sent to you. We also note the significant changes that have been made in the last tentative recommendation that was distributed to interested persons for comment.

Preliminary portion of Recommendation

Substantially revised in accordance with suggestions of various Commissioners.

Section 1300

Commissioner Stanton suggested that the definition of "domicile" in subdivision (g) be expanded to include a provision indicating the domicile of an unincorporated entity. He notes that the Unclaimed Property Compact includes the following provision:

. . . the state under whose laws the holder is incorporated (if the holder is a corporation) or organized (if the holder is an association or artificial entity other than a corporation) or the state where the holder is domiciled (if the holder is a natural person) shall be entitled to . . .

When the Commission added subdivision (g) to Section 1300, the Commission discussed this problem and determined to leave to court construction the meaning of the word "domicile" as applied to associations.

Section 1501

Commissioner Stanton questions whether the phrase "or any similar organization" should be included in subdivisions (b) and (d). This phrase is necessary because it is not possible to list in these subdivisions all the types of organizations organized under the laws of all the states that should be considered "banking organizations" or "financial organizations" under the statute. The terms have significance only as used in Section 1513 and an examination of that section, together with the definitions, indicates that no serious problem as to meaning will exist. Note that the N.H. statute (Exhibit IX - green) includes the phrase "and all similar organizations" in Section 471-A:1--the New Hampshire statute, however, includes all banking and financial organizations under the term "financial organization."

Commissioner Stanton also questions whether "private corporation" should be substituted for "corporation (other than a public corporation)" in subdivision (c). The Commission intended no change in meaning in making this substitution. The staff believes that no substantive change was made. In 3 Witkin, Summary of California Law at 2312 it is stated:

Private corporations include all those organized for private purposes. Public corporations are best illustrated by those created for governmental purposes, such as incorporated cities or towns (municipal corporations), and quasi-municipal corporations, such as irrigation, reclamation and utility districts. However, the Legislature has power to create other types of public corporations; e.g., a state hospital for the insane, "The State Bar of California" and the State Compensation Insurance Fund. The constitutional prohibition against creating corporations by special act applies only to private corporations, and does not restrict the legislative power to form public corporations. [Citations omitted.]

The New Hampshire statute uses the term "private corporation." See Section 471-A:1. II (Exhibit IX, green). See also, for example, Section 17 of Article XII of the California Constitution which gives the Public Utility Commission the power to regulate "private corporations" engaged in certain public utility activities. The Constitutional Revision Commission would retain this provision to read: "Every private corporation, person, or group of persons owning, operating, etc. . . is a public utility and is subject to control by the Legislature."

In the interest of clarity, we have included "utility" under the definition of "business association" in subdivision (c). A similar addition was made by the Tennessee Law Revision Commission to a subdivision that is in other respects comparable to our provision.

Effect of proposed legislation on special statutes

The recommended legislation purports to escheat all tangible and intangible property that falls within the scope of the statute. How will it affect special statutes that provide for a different treatment of particular types of property or property held by particular persons? For example, see Probate Code Section 231 (page 43 of Recommendation), which provides that certain moneys do not escheat to the State. See also, Chapter 766 of the Statutes of 1967, which provides that certain unclaimed, lost, or abandoned property in the possession of any state college goes to a scholarship and loan fund.

As far as intangible property is concerned, we believe no change is needed in the recommended legislation. See Section 1510 which has the introductory clause "Unless otherwise provided by statute of this state."

To take care of tangible property, we suggest that Section 1519 (page 19 of Recommendation) be revised to add at the beginning of the section "Unless otherwise provided by statute of this state,". This change is necessary because we have expanded Section 1519 (formerly Section 1507) to include tangible property. We suggest that the same change be made in Section 1520 (page 20 of Recommendation). We also expanded Section 1520 (formerly Section 1509) to include tangible property. Section 1517 (page 18 of Recommendation) was also expanded to include tangible property, and the same introductory clause might be included in the last sentence of this section.

If the suggested changes were made, paragraph (3) of subdivision (a) of Section 1502 (formerly Section 1526)(page 12 of Recommendation) would be unnecessary. However, we suggest that this paragraph be retained since it appears in existing law and its deletion would no doubt cause objections from local agencies. (We received a number of inquiries from local agencies concerning this study, but we received no objections since paragraph (3)

has always been in Section 1502.)

Section 1502

We have added an introductory clause "Except for sums payable on telegraphic money orders" to subdivision (b).

Representatives of various railroads have suggested that the utility exemption in subdivision (b) be extended to include railroads and other common carriers. See Exhibits II (yellow), III (green), and IV (gold). See the discussion of this exemption in the preliminary portion of the Recommendation.

Section 1511

This section has been revised in accordance with the suggestions of American Express Company. See the letter from American Express set out as Exhibit I (pink), page 3, and Exhibit A of that letter. The section should be considered in connection with Section 1581. These two sections permit the company that issues travelers checks or money orders to elect whether (1) to keep a record of the name and address of the apparent owner or (2) to keep merely a record of the state where the instrument was purchased. If the company elects to keep the latter record, it also must pay escheated funds to California under Section 1511. It should be noted that California will defend any claim for the same funds by another state and will indemnify the company in the event that it is determined that the other state is entitled to the funds. See Section 1561. Thus, the section cannot operate to the detriment of the holder.

See also the letter from Travelers Express Company, Exhibit VIII (pink), pages 1-3. Note that the 1967 Indiana statute is comparable to our proposed Section 1511. See Exhibit X (yellow)(underlined portion on pages 38 and 39).

Section 1512

The staff suggests that Section 1512 be deleted and that the following additional subdivision be added to Section 1515:

(b) If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. This presumption is a presumption affecting the burden of proof.

Subdivisions (b) and (c) should be renumbered if this new subdivision is added.

The staff prefers the proposed subdivision to Section 1512 for two reasons. First, the proposed scheme will conform to the form that American Express suggests for travelers checks and money orders (Section 1511) where a presumption is used. Second, the form suggested is existing California law and is contained in the Uniform Act.

In connection with this suggestion, it should be noted, however, that New Hampshire in its 1966 statute adopted a modified form of the Uniform Act on this point. See underlined portion of Section 471-A:4 (Exhibit IX - green). The New Hampshire statute is intended to conform to Texas v. New Jersey. Note that the New Hampshire statute omits "if a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation." The draft statute prepared by the Harvard Student Legislative Research Bureau also omitted this language from the Uniform Act. On the other hand, the 1967 Indiana statute is substantially the same as the subdivision recommended above. See Exhibit X (yellow)(Section 51-705).

There is an additional advantage in using the presumption form of statute--this is the form that most states will probably use in drafting legislation to conform to Texas v. New Jersey. For example,

the Tennessee Law Revision Commission has distributed a "First Preliminary Draft" of an Unclaimed Property Statute (June 30, 1967) which contains the presumption in the form enacted in New Hampshire. (The Tennessee recommendation follows fairly closely the provisions of the New Hampshire statute.)

We have revised subdivision (a)(2) and (b)(1) and (2) of Section 1512 in accordance with suggestions made by Commissioner Stanton.

Section 1513

We have added subdivision (e) to cover a sum payable on a money order issued by a business association (other than a banking or financial organization) or on any telegraphic money order. This revision was suggested by American Express - Exhibit I (pink), page 11, and Travelers Express, Exhibit VIII (pink), page 3.

Section 1515

In accordance with a suggestion of Commissioner Stanton, we have substituted "owing" for "held and owing" in this section.

We have deleted the words "or annuitant" from the introductory clause of subdivision (b) because this subdivision applies only to policies not matured by actual proof of the death of the insured. This makes the provision the same as the Uniform Act; the inclusion of "annuitant" was an error.

At the suggestion of Commissioner Sato, we have added "according to the records of the corporation" in subdivision (b)(3).

Section 1517

New Hampshire substituted "that is unclaimed by the owner at the end of the period provided by law or court decree for winding up its

C
affairs and distributing or liquidating its assets" for the phrase
"that is unclaimed by the owner within six months after the date of
final distribution or liquidation."

It should be kept in mind that this provision applies to pro-
ceedings for the dissolution or liquidation of business associations
in other states.

Sections 1530 and 1531

Should the name and address of the owner be reported when the
claim is barred by the statute of limitations? Should publication
be made in such a case? This is a difficult problem since it is not
always possible for the holder to determine whether a claim is barred
by the statute as in case of a minor, insane person, member of the
armed forces, etc. See subdivision (e) of Section 51-715 on page 43 of
Exhibit X (yellow). See also underlined portion of Section 51-716 on
page 43 of Exhibit X (yellow).

C
In this connection, note subdivision (c)(2) of Section 1531. Where
the claim is barred by the statute of limitations, the state will not pay
the owner, but the owner can request the holder to pay the claim and, if
the holder pays the claim, the holder will be reimbursed by the state.
See Sections 1570(b), 1560(b).

Voluntary delivery of property

See Sections 51-718 and 51-719 on Exhibit X (yellow).

Section 1541

In response to a suggestion from Commissioner Stanton, we have revised
this section to indicate that the State Controller is to be named as a
defendant. The Tennessee Law Revision Commission made a similar revision
in the comparable section of their preliminary draft.

Section 1560

C
In response to a suggestion from American Express, we have revised
subdivision (b). See Exhibit I (pink) at pages 5-8. Substantially the
same suggestion was made by Travelers Express Company. See Exhibit VIII
(pink) at pages 6-9.

New Section

Should the statute include the following new section:

The State Controller shall keep a permanent record of all reports submitted to him.

New Hampshire Section 471-A:12 VII includes this provision.

Section 1564

Commissioner Stanton raises the question whether the account referred to in subdivision (a) should be titled "Abandoned Property."

Section 1565

At Commissioner Stanton's suggestion we have restored the phrase "or against the holder" which was proposed to be deleted from this section. As he points out, this is a "no action" statute, which seems to provide more protection than an indemnity statute. If the language were deleted, an action could be brought against the holder, which the State Controller will have to defend, thereby circumventing this section. Since the property has been delivered to the State Controller, the owner should present his claim to the State Controller, not bring an action against the holder.

Section 1566

Commissioner Stanton suggests that the immunity provided by this section may be too broad.

Section 1570

Concerning the statute of limitations, see the comment to Section 52 of the proposed legislation.

The State Controller suggests that subdivision (b) be deleted. See VI (buff). See Section 51-726 on Exhibit X (yellow).

In response to a suggestion from Commissioner Sato, we have added "from the holder" in subdivision (a). This appears to clarify the section without changing its substance.

Cooperation with other states

You may find the provision marked on page 42 of Exhibit X (yellow) of interest. This provision is the substance of the provision that the staff at one time suggested for inclusion in the statute to permit California to collect and pay over property to other states.

Section 1576

See Section 51-733 on Exhibit X (yellow).

Section 1581

The staff has revised this section (1) to require a company issuing travelers check or money orders to maintain either of the records specified in the section and (2) to impose a substantial civil penalty upon failure to maintain the records. Subdivision (b) also is new.

Savings clause (Section 52)

The savings clause has been revised and expanded in the interest of clarity. The revised provision will meet the problem that concerned American Express. See Exhibit I (pink), pages 1-2. See also, to the same effect, Exhibit VIII (pink), pages 3-4.

Unclaimed Property Compact

See Exhibit VII (white) indicating that only New Jersey has adopted the Compact. Additional states may have adopted the compact at the 1967 session. The Tennessee Law Revision Commission has tentatively recommended that that state adopt the compact.

The Council of State Governments further advises that federal consent to this compact is not required.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memorandum 67-48

EXHIBIT I

MEMORANDUM TO THE CALIFORNIA LAW REVISION
COMMISSION ON BEHALF OF AMERICAN EXPRESS
COMPANY REGARDING THE TENTATIVE RECOMMENDA-
TION RELATING TO ESCHRAT

ADAMS, DUQUE & HAZELTINE
WALLER TAYLOR, II
BRUCE A. BECKMAN
Counsel for
American Express Company

Dated: June 23, 1967

MEMORANDUM TO THE CALIFORNIA LAW REVISION
COMMISSION ON BEHALF OF AMERICAN EXPRESS
COMPANY REGARDING THE TENTATIVE RECOMMENDA-
TION RELATING TO ESCHEAT

We have reviewed the Tentative Recommendation Relating To Escheat dated April 5, 1967 (the "Tentative Recommendation") on behalf of our client, American Express Company, and present the following comments for your consideration:

I. Possible Conflicting Claims of Escheat (Sections 1300 and 1502).

The Tentative Recommendation, in Section 1511, proposes to change the basis on which California would escheat travelers checks and money orders to state of issuance, which American Express Company believes to be the sound position. However, California Code of Civil Procedure Section 1502 would provide that the escheat law would not apply to any property escheated by another state prior to September 18, 1959, which was the effective date of the existing statute. Proposed Section 1300 would define "escheat" so as to include transfers of right to custody in states having a custodial unclaimed property statute.

These sections, as applied to the revised basis for escheat in California, would, under proposed Sections 1530 and 1532, place a duty on companies to report and pay over funds with respect to travelers checks and money orders issued in California which had escheated to other states subsequent to September 18, 1959 but prior to the effective date of amended Section 1511. American Express Company, for example, has transferred to the State of New York custody of substantial sums of money in years subsequent to September 18, 1959 with respect to travelers checks issued in California on the basis that New York, rather than California, is the principal place of business of American Express Company.

Under the Tentative Recommendation, American Express Company, and companies similarly situated, would now be required to pay funds over to the State Controller with respect to the same obligations.

It would clearly violate both Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1961) and Texas v. New Jersey, 379 U.S. 674 (1965) to attempt to require American Express Company to pay over such funds twice. It is therefore suggested that either proposed Section 1502 or proposed Section 1511 be amended to provide that the effective date of the new basis for escheating travelers checks and money

orders be as of January 1, 1968 or January 1, 1969.*

II. Suggested Revision of Proposed Section 1511 to Provide a Bridge to the Holding in Texas v. New Jersey, 379 U.S. 674 (1965).

As noted above, American Express Company agrees that the place of sale should govern the escheat of travelers checks and money orders. We also agree that a careful review of the opinion of the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965), indicates that this approach would be accepted by that Court in spite of the language in the opinion regarding escheat to the state of domicile where no last known address of the payee is known.

However, in order to make it easier for the Court to approve of the place of sale test, we suggest that proposed Section 1511 be amended to include a presumption that the state of sale is the state of last address of the purchaser.

A suggested form of Section 1511 including such a presumption is attached hereto as Exhibit A.

* For accounting purposes, American Express Company requests that the effective date of these sections be as of the first of the year.

III. Suggested Revision of Proposed Section 1513(d).

Proposed Section 1513(d), providing the conditions for the escheat of sums payable with respect to various instruments, including money orders, appears to omit money orders issued by business associations other than banking and financial institutions. Since "business associations" is defined to include banking and financial organizations, it is suggested that the words "banking or financial organization" be replaced by the words "business association" in the three places in which such words appear in proposed Section 1513(d).

IV. Apparent Conflict in Sections Relating to Ability of Issuer of Travelers Checks and Money Orders to Pay the Holder After Escheat, and Obtain Reimbursement From the State Controller.

It is essential to the proper operation of travelers check and money order systems, and for the protection of the public, that the issuers of these instruments have the right, even after the interposition of the escheat law, to pay them upon presentation, and to obtain reimbursement from the State Controller without consideration of possible statutes of limitation questions, and without

penalty through the imposition of a fee.

While these considerations may also apply to other types of commercial paper, they are particularly applicable to travelers checks and money orders because they are by business necessity issued without date and almost invariably are negotiated to holders in due course. Such persons receive these instruments without notice of any possible infirmity therein, and present them for payment without any special documentation supporting their right to be paid. This situation was expressly recognized (as to travelers checks) by Mr. DeMouilly in his letter of April 24, 1967 to this office.

It is also the apparent intent of the Tentative Recommendation to recognize the practical necessities of these businesses and to authorize such payment and reimbursement.

However, several of the proposed sections may operate to defeat this intent in practice.

A. Sections 1560(b) and 1570(b).

Proposed Section 1560(b) would provide that any holder who has paid moneys to the State Controller could make payment to the person appearing to be entitled thereto,

"and upon filing proof of such payment and proof that the payee was entitled thereto" obtain reimbursement.

Proposed Section 1570(b) would provide that payment of escheated property to the State Controller would not revive barred claims, thereby making it clear that the owner, if barred as to the holder, would be barred as to the State Controller.

The apparent intent of these sections is to bar any possibility of the owner of escheated funds from reclaiming them from the State Controller after escheat if the owner could not have obtained the funds from the holder in the absence of escheat. It is also the apparent intent of the Law Revision Commission, as indicated by the comment to Section 1570(b) set forth at page 73 of the Tentative Recommendation, to allow the holder of a claim to pay the owner even though the claim may be barred and still obtain reimbursement under Section 1560(b).

However, the language of these sections raises doubts as to whether or not the sections would be interpreted by the Courts in accord with said comment. It is entirely possible that Section 1570(b) would be held to limit the effect of Section 1560(b), so as to preclude reimbursement if the claim were barred by the statute of

limitations when paid by the holder. For example, since Section 1560(b) would require proof by the issuer that the person paid was "entitled" to payment, the State Controller might raise the argument, which a Court might accept, that the statute of limitations had run on the right of anyone to collect from the issuer, therefore the person paid was not "entitled" to be paid, therefore no reimbursement could be had. Since the instruments bear no date of issuance, and various holders in due course might exist whose rights, at least against prior endorsers, would not be barred, the situation could be chaotic.

Of course, American Express Company, by its course of business, would be estopped to assert the statute of limitations, and would never consider asserting it. However, under Section 1560(b), American Express Company could be required to prove, as to each bearer of a travelers cheque or money order that American Express Company was estopped to assert the statute of limitations, or that such person took the instrument for value without notice of the issue date. This burden of proof could be made to depend upon whether or not a particular bearer had knowledge of the circumstances giving rise to an estoppel, and whether or not a period equal to the statute of limitations had run

since the last act or communication of the company affecting the particular bearer, and similar issues. Additionally, American Express Company could be required to negate the existence of any other possible defenses, such as forged endorsements or theft. Of course, proving a negative is ordinarily quite difficult, if not impossible.

The language of proposed Section 1560(b) was taken from existing Section 1513. However, it must be borne in mind that Section 1513 is part of a custodial statute, wherein no statute of limitations considerations could be raised by the State Controller, and essentially all that can be required is a showing that the travelers check or money order was presented and paid.

It is submitted that Section 1560(b) should be amended to spell out that reimbursement may be had by a showing merely that escheated travelers checks and money orders have been duly presented for payment and were paid by the issuer.

Additionally, Section 1570(b) should be amended by adding the following sentence thereto: "Nothing in this subdivision (b) shall affect the right of a holder to pay a claim directly to the apparent owner thereof, whether or not such claim may be barred, and to obtain reimbursement there-

for under Section 1560(b)."

These suggested amendments to Sections 1560(b) and 1570(b) would insure the interpretation of those sections in accord with the apparent intent of the Law Revision Commission as indicated by the above-mentioned comment to Section 1570(b) at page 73 of the Tentative Recommendation.

B. Section 1540(c).

Section 1540(c) provides that, when claims are made for refunds, the State Controller shall deduct from such refunds to claimants 1%, but not less than \$10, "for each individual share claimed," as a service charge.

Apparently this means that a minimum of \$10 would be deducted with respect to each travelers cheque and money order which American Express Company honored after it had escheated. Since the vast bulk of travelers cheques are in denominations of \$10, this deduction would effectively remove the right of reimbursement held out by Section 1560(b).

In view of the nature of the business of travelers checks, set forth in our prior communications, the above result would be confiscatory and destructive of the travelers check business.

Additionally, it does not seem particularly equit-

able for the State to charge a fee for being allowed, in effect, the free use of the cash reserves of American Express Company (and other issuers of travelers checks and money orders) set up and held to cover outstanding travelers checks and money orders pending presentation of such instruments, and taken over by the State under the escheat law.

It is submitted that the service charge should not be applicable at all to claims for reimbursement with respect to travelers checks and money orders. The simplest way in which to accomplish this (which may have been the intent since the sections are not clear in this regard) would be to add at the end of Section 1560(b) the words "without deduction of any fee or other charges." It would also be desirable to add the following at the end of proposed Section 1540(c) "; provided, however, that no such service charge shall be deducted from reimbursement payments made by the State Controller pursuant to Section 1560(b)."

At the least, Section 1540(c) should be amended to reduce the service charge, and to provide clearly that the minimum service charge should be made with respect to each claim, regardless of how many items were included therein.

V. Conclusion.

It is submitted that the Tentative Recommendation should be amended in the following respects:

A. Amend either proposed Section 1502 or proposed Section 1511 to provide that the effective date shall be January 1, 1968 or January 1, 1969. This will eliminate the retroactive application of the new basis for escheating travelers checks and money orders and will remove the possibility of subjecting the issuers thereof to conflicting claims from several states.

B. Amend proposed Section 1511 to provide a presumption that the last known address of the apparent owner of a travelers check or money order is in the state of issuance. This will provide a bridge to the opinion in Texas v. New Jersey, 379 U.S. 674 (1965).

C. Amend proposed Section 1513(d) to include money orders issued by business associations.

D. Amend Section 1560(b) to provide that the holder who is the issuer of a travelers check or money order may pay the bearer, and receive reimbursement upon a showing that the instrument was duly presented for payment and was paid.

E. Amend Section 1570(b) to provide explicitly that the holder may pay barred claims to the apparent owner and obtain reimbursement under Section 1560(b).

F. Amend proposed Section 1540(c) to provide that no service charge shall be deducted from reimbursement payments made pursuant to Section 1560(b).

G. Amend proposed Section 1560(b) to provide that the reimbursement payments to be made thereunder shall be without deduction of any fee or other charge.

DATED: June 23, 1967.

Respectfully submitted,

ADAMS, DUQUE & HAZELTINE
WALLER TAYLOR, II
BRUCE A. BECKMAN

By _____
Attorneys for American
Express Company

PROPOSED REVISED FORM OF SECTION 1511

§ 1511 (a) Any sum payable on a travelers check or money order escheats to this state under this chapter if the conditions described in Section 1513 for the escheat of any sum payable on such instrument are satisfied, and either (1) the last known address of the apparent owner of such instrument is in this state, or (2) the holder of such instrument is domiciled in California and the state of last known address has no statute which provides for the escheat to that state of such sum.

(b) If the records of the holder do not show a last known address of the apparent owner of a travelers check or money order, it will be presumed that the state in which the travelers check or money order was purchased is the state of last known address of the apparent owner.

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File: G-4561-374

May 11, 1967

Mr. John H. DeMouilly,
Executive Secretary,
California Law Revision Commission,
School of Law,
Stanford, California

Dear Mr. De Mouilly:

Reference is made to your letter of April 10, 1967, transmitting copy of the Commission's tentative recommendation of April 5, 1967, concerning Escheat, which relates to revision of the California version of the Uniform Disposition of Unclaimed Property Act, and inviting my comments.

I should like to reiterate our opposition, expressed in my letters to you of November 3, 1966, and March 3, 1967, especially to the Commission's proposal to restrict the present complete exemption from this Act for public utilities, other than carriers, and to the Commission's refusal to expand the present complete exemption of public utilities to include railroads and other common carriers.

While the California Legislature in 1959 adopted the Uniform Disposition of Unclaimed Property Act generally, it made some important changes from the Uniform Act in the definition of "person" subject to the provisions of the Act. The Uniform Act does not exempt either

Mr. John H. DeMouilly . . . #2

a "public corporation" or a "utility" from the definition of "person" within its coverage. Section 1(g) of the Uniform Act (vol. 9A, Uniform Laws Annotated, p. 254) states:

"Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity. (Emphasis added.)

"Utility" is defined, but not for purposes of exclusion, in section 1(h) of the Uniform Act, thus:

"Utility" means any person who owns or operates within the state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas.

The only reason for the above definition of "utility" in the Uniform Act is that section 4 of that Act contains a special section dealing with deposits and refunds held by utilities, confining them to amounts owing with respect to furnishing of service in the involved state. The California Act, while retaining the above definition of "utility" (§ 1501(h), C.C.P.), then proceeds to exempt both a "public corporation" and a "utility" from the definition of "person" in section 1501(g), C.C.P. The latter section of the California Act reads:

"Person" means any individual, business association, government or political subdivision, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity other than any public corporation or utility. (Emphasis added.)

Section 4 of the Uniform Act, dealing with utilities' service charges and deposits, is not included in the California Act. Finally, it is to be noted that the definition of "utility" in both Acts does not include railroads or other common carriers, although it does include virtually every other type of recognized public utility: telephone,

Mr. John H. DeMouilly . . . #3

telegraph, electric, gas, steam and water.

Your Commission recommendation would:

(1) On page 22 in proposed sec. 1501(i) C.C.P., strike "utility" from the present exemption from "person" subject to the act;

(2) On page 22 in proposed sec. 1501(j) C.C.P., amend the definition of "utility" slightly to read as follows, without expanding it to cover railroads or other common carriers:

"(j) 'Utility' means any person who owns or operates within this State, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, whose rates are regulated by the Public Utilities Commission of this state or by a similar public agency of another state or of the United States."

(3) On page 24 add, as section 1502(b) C.C.P., the following qualified exemption for utilities:

"(b) This chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be, and which has been, used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility."

I submit that the proposal to restrict the present complete "utility" exemption to situations where the utility holds unclaimed property which a regulatory body permits or requires to be, and it has been, used or applied directly or indirectly for the benefit of ratepayers in determining the utility's rates, would merely confuse, rather than clarify, the exemption situation and would lead to substantial administrative and accounting expense for both the state and the utility to determine whether in a particular situation the exemption was applicable. Basically, the California legislature in 1959 must have reasoned that as a matter of simple fact any unclaimed

Mr. John H. DeMouilly . . .#4

funds retained by a gas, electric or telephone utility tended to hold down their rates on the vital public service afforded by them, which justified exempting them completely, and without qualification, from the obligation imposed by the law to turn such funds over to the state. Certainly these same reasons exist for exempting railroads and other common carriers. Their services to the public are equally vital, and any funds retained by them also tend to hold down their rates. However, since their over-all rate structure is not regulated by the Interstate Commerce Commission or the California Public Utilities Commission in the same complete sense as are those of the monopolistic other forms of utilities, it would probably be impossible for them to receive the benefit of the Commission's proposed qualified exemption even if they were included within the definition of utility.

This failure in the present law to include railroads and other common carriers in the utility exemption which the Commission now proposes to preserve appears to be a plain violation of the equal protection clause of the fourteenth amendment to the Federal Constitution and Article I, sections 11 and 21, and Article IV, section 25 NINETEENTH of the California constitution. The above federal constitutional provision forbids a state to "deny to any person within its jurisdiction the equal protection of the laws." The California constitutional provisions respectively state:

(Art. I, § 11) "All laws of a general nature shall have a uniform operation."

(Art. I, § 21) "No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the Legislature; nor shall any citizen, or class of citizens be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

(Art. IV, § 25 NINETEENTH) "The legislature shall not pass local or special laws in any of the following enumerated

Mr. John H. DeMouilly . . . #5

cases, that is to say: . . . granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity."

The test for determining the validity of legislation assailed under either the above federal or state constitutional provisions is substantially the same. O'Kane v. Catuira, 212 Cal. App. 2d 131, 137 (1963). Under either, it is settled that invalidity results when persons in the same class are differently treated or when purported classifications are arbitrary because resulting in discrimination bearing no reasonable relationship to the objectives of the legislation. Hillsborough v. Crowell, 326 U. S. 620, 623 (1946); Smith v. Cahoon, 283 U.S. 553, 566-67 (1931); United States v. Golden Gate Bridge and H. Dist., 37 Fed. Supp. 505, 511 (D.C.N.D. Cal. 1941); Katzev v. County of Los Angeles, 52 Cal. 2d 360, 369 (1959); O'Kane v. Catuira, supra, 137; Blumenthal v. Board of Medical Examiners, 57 Cal. 2d 228, 232-33 (1962). As the court put it in the Katzev case, supra, 369:

" . . . " a statute makes an improper and unlawful discrimination if it confers particular privileges upon a class arbitrarily selected from a larger number of persons all of whom stand in the same relation to the privileges granted and between whom and the persons not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of the one and the exclusion of the other. . . . "

Accordingly, the courts in the above cases have held that in the following situations the granting of exemption to some while denying it to others in various regulatory situations violated the above provisions: legislation requiring motor carriers to furnish insurance but exempting carriers of agricultural products, Smith v. Cahoon; legislation limiting issuance of license to opticians to those who have served a five-year apprenticeship or have been licensed for five years in another state, Blumenthal v. Board of Medical Examiners;

Mr. John H. DeMouilly . . . #6

legislation permitting partnerships and corporations, but not individuals, to apply for a license to transmit money to foreign countries, O'Kane v. Catuira; legislation banning crime comic books, but exempting newspaper comic strips, Katzev v. County of Los Angeles.

Obviously, under the above principles exemption of utilities, except railroads and other common carriers in the California Disposition of Unclaimed Property Act would violate the above constitutional provisions. Railroads and other common carriers under California law are clearly in the same class with all other public utilities. Article XII, section 23 of the California constitution specifically designates railroads and all common carriers as "public utilities", subject to regulation by the Public Utilities Commission, along with telephone and telegraph companies and companies engaged in "production, generation, transmission, delivery or furnishing of heat, light, water and power." Section 1238, C.C.P. permits condemnation for any public use or for railroads. The United States Supreme Court has also recognized that railroads and other utilities are part of the same class for purposes of the equal protection clause of the fourteenth amendment. In Nashville C. & St. L. Ry. v. Browning, 310 U.S. 362, 368 (1940), that court stated:

"That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with that separateness which their distinctive characteristics and functions in society make appropriate - these are among the common-places of taxation and constitutional law."

Finally, and most significant, in the light of the objectives of the instant act, there plainly is no rational difference between railroads and other common carriers and all other public utilities, which would justify exemption of the latter but not the former. In

Mr. John H. DeMouilly . . . #7

Douglas Aircraft Co. v. Cranston, 58 Cal. 2d 462 (1962), it was indicated that the objectives of this Act were to protect unknown owners by locating their property for them and to give the state, rather than the holders of unclaimed property, the benefit of use of it. Certainly it cannot be said that there is any reason why unknown holders of railroad or carrier unclaimed dividends or wages should be any more entitled to protection than similar holders of dividends or wages owing from other public utilities. Nor is there any conceivable reason why the state should be entitled to use such funds owed by railroads and carriers but not those owed by other public utilities. As indicated above, retention of such funds by any type of utility tends to enable it to hold down its rates on vital public service. It has also been observed above that the term "utility" is used in the Uniform Act in section 4 (but not in the California Act), only for the purpose of confining deposits and refunds held by utilities, in the non-carrier sense, to those for utility service performed in the particular state. The Commissioner's notes on that section, Vol. 9A, Uniform Laws Annotated, p. 259, indicate that this limitation was imposed because of administrative difficulties arising where utilities did business in two or more states. If it was because "utilities" other than railroads or common carriers did business in more than one state that the California Legislature saw fit to exempt them completely, these considerations even more strongly require the exemption of railroads and other common carriers. California railroads are definitely more multi-state in their operations than the average non-carrier utility. Southern Pacific operates in eight states and issues paychecks in 30.

Mr. John H. DeMouilly. . . #8

Finally, the Commission's action in proposing to restrict the utility exemption and in refusing to expand it to cover railroads and other common carriers, is directly contrary to action taken by the legislature only two years ago. In 1965 the legislature, virtually without dissent, passed a bill retaining the present unqualified exemption of utilities but expanding that term to cover railroads and other common carriers. Though this bill was pocket vetoed by Governor Brown, it is a clear recognition by the legislature of the correctness of our position, which the Commission now proposes to disregard.

The changes we recommend to remove this existing discrimination would be these:

1. In proposed section 1501(j) C.C.P., add after the word "gas", "and any railroad or other common carrier,".

2. Amend proposed section 1502(b) C.C.P. by striking the last five lines so that it would read:

"(b) This chapter does not apply to any property held by a utility."

Naturally the railroad industry will do everything possible to secure these changes in any revision bill which the Commission may introduce next year, but we would much prefer to have the Commission recognize their appropriateness and sponsor them in its own final recommendation. While the railroads are also opposed to the Commission's proposal (pp. 96-97) to require unclaimed wages to be escheated in California where the last known address of the claimant is not here, naturally we would not oppose you on this, if you agreed to having our complete exemption included in your recommendation.

Would appreciate hearing from you further as to the Commission's views on this question.

Sincerely,

Robert L. Pierce

UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT

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June 6, 1967

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

Thank you for affording us the opportunity to comment on the tentative recommendation relating to escheat, recently completed by the California Revision Commission and forwarded with your letter of April 10, 1967. The recommendation shows that the Commission has given very careful and complete consideration to all of the matters involved. However, I, like my counterparts at Southern Pacific and Santa Fe, am unable to understand the distinction drawn between the common carriers and other utilities. It is my belief that to exempt the utilities except for the carriers and to have the carriers remain subject to the law would clearly be a violation of the equal protection clause of both the United States Constitution and the California Constitution, as set out in more detail by Mr. Pierce, of Southern Pacific. It is my understanding, and I believe it is plainly the law, that equal protection has been denied when a statute confers privileges upon one group and denies them to another group, all within the same class, where there is no reasonable basis for the distinction or a substantial difference between the groups.

Insofar as legislative intent is concerned, we feel that the bill passed by the 1965 Legislature offers the answer. This bill retained the present unqualified

Mr. John H. DeMouilly

-2-

June 6, 1967

exemption of the utilities but expanded it to cover the carriers. The bill was passed by a very large majority of the Legislators but was pocket vetoed by Governor Edmund G. Brown.

Concerning specific changes in the present tentative recommendation, Union Pacific concurs in those set out by Mr. Pierce on the last page of his letter of May 11, 1967.

We feel very strongly that the carriers should be treated the same as the other utilities in this matter and request that you renew consideration of this point. Again, I should like to thank you for allowing us an opportunity to comment on these recommendations.

Yours very truly,


Edward C. Renwick

WIK:jd

cc: Mr. LeRoy E. Lyon, Jr.
Mr. John J. Balluff
Mr. Robert L. Pierce
Mr. E. L. Van Dellen

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
CALIFORNIA LAW DEPARTMENT

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MADISON 8-0111

June 1, 1967

126-36 RBC

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

I have reviewed the Law Revision Commission's tentative recommendation relating to escheat which accompanied your memorandum of April 10 as well as the letter of May 11, 1967, to you from Mr. Robert L. Pierce of Southern Pacific Company. You will recall that I wrote you on December 2, 1966, and on March 2, 1967, with regard to general conclusions of the Commission which had been communicated to me prior to those dates.

Upon review of the final tentative recommendation I am compelled to reiterate the opposition of the Santa Fe Railway to the recommendation insofar as it restricts the present public utilities exemption and fails to expand it to railroads and other common carriers.

I concur in the views expressed by Mr. Pierce in his letter of May 11. I feel there is substantial doubt under the equal protection clauses of the federal and state Constitutions of the validity of the classification embodied in the exemption. I believe strongly that the application of the exemption only to unclaimed property of utilities other than carriers which the Public Utilities Commission or similar public agency "permits or requires to be, and which has been, used or applied directly or indirectly for the benefit of the rate payers in determining the rates to be charged by the utilities" is impracticable of application and that it embraces an arbitrary standard which really has no legitimate

Mr. John H. DeMouilly

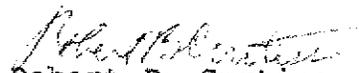
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June 1, 1967

place in an escheat law. On the other hand there are sound reasons for an exemption applicable to all utilities which have been expressed heretofore and which I see no reason to repeat at this time.

For these reasons and the others expressed by Mr. Pierce we will seek amendments to the bill if introduced in its present form but, along with Southern Pacific, we would appreciate the Commission's giving further consideration to embodying them in its own final recommendation.

Very truly yours,


Robert B. Curtiss

RBC mp

cc Messrs. Pierce, Renwick, Van Dellen, Lyon

Memo 67-48

EXHIBIT V

GENERAL TELEPHONE COMPANY
OF CALIFORNIA

EXECUTIVE OFFICES

2020 Santa Monica Boulevard - P.O. Box 889
Santa Monica, California 90406

AREA CODE 213
TELEPHONE 392-6311

IN REPLY REFER TO

1500

April 21, 1967

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. DeMouilly

Your revised tentative recommendation dated April 5, 1967, relating to ESCHEAT has been reviewed and appears to be in good order.

Very truly yours



A. G. COOLEY
Assistant to the President

HOUSTON I. FLOURNOY
CONTROLLER



Controller of the State of California

SACRAMENTO

June 26, 1967

California Law Revision Commission
30 Crothers Hall
Stanford University
Stanford, California 94305

Attention Mr. John H. DeMouilly, Executive Secretary

Gentlemen:

As requested in your letter of April 24, we have reviewed the revised tentative recommendations relating to the Uniform Disposition of Unclaimed Property Act, and make the following comments:

On page 53a of the draft, subdivision e provides that the State Controller shall mail notices to the owners within 120 days from the receipt of the report required by Section 1530. We would suggest that this be changed to read ". . . within 120 days from the receipt of final date for filing the report . . ."

At page 73, subdivision b has been added to Section 1570. The comment relating to subdivision b states that it has been added to make clear that if the owner's claim against the holder is barred, his claim against the Controller is also barred. The comment also states that subdivision b does not affect the holder's right to reimbursement under subdivision b of Section 1560. Does this mean that the Controller is prohibited from making payment to an owner if the statute of limitations has expired and the owner can no longer enforce a claim against the holder? Also, does it mean that if the Controller refuses to make payment because of the statute of limitations, the holder may then make payment to the owner and claim reimbursement from the Controller? This would seem to reverse the present situation under which the holder may refuse to make payment, but the owner may claim and obtain payment from the Controller. We prefer the present arrangement and believe the suggested change would create additional administrative and public relations problems for us.

If you need any additional information, please let us know.

Very truly yours,

HOUSTON I. FLOURNOY, STATE CONTROLLER

By

B. G. Cord
B. G. Cord, Chief
Division of Accounting

The Council of State Governments



1313 EAST 60TH STREET • CHICAGO, ILLINOIS 60637

April 11, 1967

AREA CODE 312
TELEPHONE: 324-3400

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. DeMouilly:

This will reference your April 3 inquiry on the Unclaimed Property Compact.

Thus far, just one State, New Jersey, has adopted the Compact. However in its 1966 action, the New Jersey legislature conditioned its adoption upon similar approval by New York, Illinois and Pennsylvania.

We understand that the Unclaimed Property Compact will be part of the Attorney General's legislative program in California. The Compact has been recommended by the Kansas Commission on Interstate Cooperation for adoption in that State.

Finally, federal consent to this Compact is not required. No efforts have been taken or are currently contemplated along these lines.

I trust we have been of some assistance.

Cordially yours,


Edwin L. Sterling
Assistant Director of Research

Memorandum 67-48

EXHIBIT VIII

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July 17, 1967

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Re: Tentative Recommendation Relating
to Escheat
Revised April 5, 1967

For: Travelers Express Company, Inc.

Dear Mr. DeMouilly:

We are writing in behalf of Travelers Express Company, Inc., a Minnesota corporation engaged in the sale of money orders throughout the United States. Travelers' principal offices are at 1120 Northwestern Bank Building, Minneapolis, Minnesota.

Travelers very much appreciated your letter of June 27 to Mr. J. E. Dalldorf by which you extended the time within which its comments on the above-mentioned subject could be submitted to July 19.

Section 1511 -- Our Primary Concern.

Our position in relation to escheat has been to support the decision of Texas v. New Jersey, 379 U.S. 674 (1965). Its

July 17, 1967

principles are correct in the light of prior decisions, in our opinion. Further, uniformity among the states in the field of escheat is an obvious essential, particularly since individual commercial transactions have come increasingly to bear relationships to numbers of states. For all states to honor Texas v. New Jersey is, we believe, the best way in which uniformity can be achieved. In fact, thus to achieve uniformity was an objective of the Supreme Court.

The California Commission's interpretation of Texas differs from ours as applied to travelers checks and money orders. Its proposed Section 1511 makes the "place of purchase" the principle basis for the escheat of travelers checks and money orders where the last known address of the owner is unknown. On the other hand, we interpret the Texas decision to mean that only the state of the holder's domicile may escheat where the last known address of the owner is unknown. Unlike the California Commission, we believe that the Supreme Court did anticipate cases, like those involving travelers checks and money orders, where the last known address of the creditor is unknown. That is the very reason why in Texas it proclaimed its secondary rule in favor of the state of domicile. Proposed Section 1511 should therefore be so revised as to conform it to Texas, in our opinion.

In addition to our primary suggestion, aforesaid, we offer the following additional suggestions and comments which we

July 17, 1967

hope will be of some assistance to you. They may be thus summarized:

1. Section 1502(a)(1). Amend so as to exclude from Chapter 7 those properties which will be escheated to California only by virtue of the proposed amendments, if prior to the effective date of such amendments they were escheated to another state.

2. Section 1513(d). Amend so as to cover money orders sold by business associations other than banking and financial organizations.

3. Section 1560(b). Amend so as to entitle a holder to reimbursement if it pays a person appearing to be entitled to payment, rather than to require the payee's actual entitlement to payment as a prerequisite to reimbursement of the holder. Also amend so as to require reimbursement of the holder for the payment of claims barred by the statute of limitations.

DISCUSSION

1. Section 1502(a)(1). Exclusions from Chapter.

Chapter 7, as proposed to be amended, relies on many entirely new and different bases of escheat from those provided for in its original form, effective September 18, 1959.

As originally passed, Chapter 7 excluded from coverage properties presumed abandoned or escheated under laws

of other states prior to said effective date. This was an equitable provision. It prevented multi-state claims when the other state had already taken or asserted a right to take.

Insofar as the proposed new Act proceeds on new bases of escheat, it would be as much a new law as Chapter 7 was on September 18, 1959. As was done by original Chapter 7, the new proposal should exclude property already claimed by other states from coverage under its new bases. Instead, however, it retains the old "cut-off date" of September 18, 1959. Thus claims escheated by other states subsequent to September 18, 1959, would also be subject to the new provisions of California law where applicable, though they might not be in the absence of such new provisions.

Suggestion: Amend said paragraph 1 by changing the period at the end thereof to a semicolon and adding, following such semicolon, the words: "provided, however, that any property which hereafter escheats to this state and which was not presumed abandoned in this state under this chapter prior to the effective date of this Act shall not be subject to the provisions of this chapter, as hereby amended, if it was escheated under the laws of another state prior to the effective date of this Act." (Such last mentioned effective date would, of course, be a date falling within the year 1968 or 1969.)

2. Section 1513(d). The Escheat of Money Orders.

The escheat of money orders issued by business

associations (other than banking and financial organizations) is not covered by subdivision (d) of proposed Section 1513 -- the section dealing with money orders. The appropriate remedy is, of course, to substitute the broader term "business association" for "banking and financial organization" wherever the latter phrase appears in subdivision (d).

It would be helpful for ease of reference, if the title of proposed Section 1513 were broadened so as to refer to business associations and money orders.

Suggestion: Amend the title of proposed Section 1513 to read as follows:

"Sec. 1513. Property held by banking or financial organizations and other business associations; travelers checks and money orders."

Suggestion: Amend subdivision (d) of proposed Section 1513 to read as follows:

"(d) Any sum payable on any other written instruments on which a business association is directly liable, including by way of illustration but not of limitation, drafts, certified checks, and money orders, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, when the owner, for more than seven years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as

evidenced by a memorandum or other record on file with the business association."

3. Section 1560(b). Claims for Reimbursement.

Subdivision (b) of proposed Section 1560 provides that a holder who has paid moneys to the Controller may make payment to any person "appearing to such holder to be entitled thereto." However, the balance of the provision makes it clear (at least if considered by itself) that more than a mere appearance of entitlement to payment on the part of the payee is required if the holder is to be reimbursed for such payment. In order that the holder may be reimbursed, the payee must turn out to have been, in fact, entitled to payment. As provided by said subdivision (b), the holder must file proof that "the payee was entitled thereto."

This places an unfair burden of decision and risk upon the holder, in our opinion. This is especially true in cases involving negotiable instruments (including travelers checks and money orders). In such cases defenses might well be available to the holder without his knowing of them at the time of payment.

The problem is particularly acute in regard to travelers checks and money orders, and the defense that a claim is barred by the statute of limitations. In determining

whether there is a good defense, the seller is confronted with complex questions. They arise from the fact that the owner of the travelers check or money order is in most cases a holder in due course, that such instruments are frequently undated, and that knotty questions of estoppel lurk in the background. In addition, as a business policy, it is essential that the seller pay a travelers check or money order even if there clearly is a good defense based on limitations. This must be done in order to preserve public confidence.

These practical necessities for paying travelers checks and money orders (even though apparently, or clearly, barred by limitations) are not recognized in subdivision (b) of proposed Section 1560; although the comment on proposed Section 1570 indicates an intent to do so and that claims for reimbursement for payments should be honored even though they need not have been paid by reason of a statute of limitations.

However, the difficulty with relying on said comment is that proposed Section 1570 itself, by its subdivision (b), bars the owner's claim against the Controller if it is barred as against the seller (holder). Thus despite the comment on said Section 1570, a court might well hold that under subdivision (b) of proposed Section 1560 there is to be no reimbursement with respect to claims barred by limitations. Not only is this in line with the literal

language of the latter provision. In addition, it is consistent with the reasonable conclusion that the right to reimbursement is to be measured by the validity of the owner's claim as against the Controller -- and, as noted, the latter claim is barred (under subdivision (b) of proposed Section 1570) if it is barred as against the seller (holder).

It should be made clear that, in general, the holder will not lose his right to reimbursement if payment of the sum due is made to one who appears to be entitled to payment. Further, it should be made clear that, in any event, the right to reimbursement will not be lost if a claim clearly barred by the statute of limitations is paid. The latter kind of provision is obviously in the public interest, as is recognized by said comment on Section 1570. It is essential thus to promote the free flow of negotiable paper in commerce.

Suggestion: Amend subdivision (b) of Section 1560 to read as follows:

"Any holder who has paid moneys to the State Controller pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon the holder's filing proof of such payment, the State Controller shall forthwith reimburse the holder for the payment. Notwithstanding the provisions of the foregoing sentence, any holder may pay a

Mr. John H. DeMouilly

Page 9

July 17, 1967

negotiable instrument (including travelers checks and money orders) and shall be reimbursed by the State Controller therefor despite the expiration of any such periods of time as are described in Section 1570 if the person so paid appears to such holder to be otherwise entitled to payment."

Very truly yours,

Paul L. Spooner, Jr.

Paul L. Spooner, Jr.

PLS/dh

EXHIBIT IX

CHAPTER 471-A [NEW] *Memo 67-48*

CUSTODY AND ESCHEAT OF UNCLAIMED AND ABANDONED PROPERTY

471-A: 1	Definitions	471-A: 12	Report of Abandoned Property
471-A: 2	General Conditions Precedent to Presumption of Abandonment	471-A: 13	Notice and Publication of Lists of Abandoned Property
471-A: 3	Property Held by Financial Organizations	471-A: 14	Payment or Delivery of Abandoned Property
471-A: 4	Unclaimed Funds Held by Life Insurance Corporations	471-A: 15	Enforcement
471-A: 5	Deposits and Refunds Held by Utilities	471-A: 16	Relief from Liability
471-A: 6	Undistributed Dividends and Distributions of Business Associations	471-A: 17	Income Accruing After Payment or Delivery
471-A: 7	Property of Business Associations and Financial Organizations Held in Course of Dissolution	471-A: 18	Periods of Limitation Not a Bar
471-A: 8	Property Held by Fiduciaries	471-A: 19	Sale of Abandoned Property
471-A: 9	Property Held by Courts and Public Officers and Agencies	471-A: 20	Deposit of Funds
471-A: 10	Unclaimed Property Held by the Federal Government	471-A: 21	Claims for Abandoned Property
471-A: 11	Other Property Held for Another Person	471-A: 22	Judicial Action Upon Determinations
		471-A: 23	Escheat Proceedings
		471-A: 24	Claims by Other States
		471-A: 25	Penalties
		471-A: 26	Rules and Regulations
		471-A: 27	Excepted Property
		471-A: 28	Severability

CROSS REFERENCE

Unclaimed sweepstakes prizes, see RSA 284: 21-p (supp).

ANNOTATION

Anno: *Uniform Disposition of Unclaimed Property Act*. 93 ALR2d 304.

471-A: 1 Definitions. As used in this chapter, unless the context otherwise requires:

I. "Financial organization" means any national bank, savings bank or institution for savings, trust company, banking company, building and loan association, cooperative bank, federal savings and loan association, credit union and all similar organizations.

II. "Business association" means any private corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

III. "Escheat", except in section 23, means the presumption of abandonment of property, followed by:

- (a) immediate proceedings for the taking of title, or
- (b) the required delivery to the state followed by immediate proceedings for the taking of title, or
- (c) perpetual state custody of the property, or
- (d) a period of state custody followed by proceedings for the taking of title.

IV. "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

V. "Life insurance corporation" means any association or corporation transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

VI. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

VII. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

VIII. "Property" means tangible personalty located in this state, and all intangible personalty.

IX. "Utility" means any person who owns or operates for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

Effective date:

1965, 214: 10, provided: "Except as provided in section 9, this act [see notes below] takes effect January 1, 1966; provided, however, that savings banks are hereby exempted from the provisions of RSA 386:24 in the year 1965."

Saving clause:

1965, 214: 8, provided: "All payments or deliveries of property to the state treasurer, before the effective date of this act [adding ch. 471-A; amending RSA 348: 12, 377: 21, 385: 5, 386: 27, 543: 10; and repealing RSA 204: 125-127, 385: 6, 7, 386: 24-26 and 28-30, 395: 22-25, 543: 11,

12], validly made under those sections of RSA hereby repealed or amended, shall not be affected by such repeal or amendment; and the rights, duties and interests of the state, the holders and all owners or claimants, flowing therefrom, shall remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by such repealed or amended sections and other applicable statutes, as though such repeal or amendment had not occurred."

Appropriation:

1965, 214: 9, provided: "The state treasurer is hereby authorized to set aside out

of funds escheated to the State between January 1, 1965 and June 30, 1966, the sum of ten thousand dollars to be used for operating expenses under this chapter, which shall constitute a continuing appropriation, which shall not lapse and may be replenished from time to time as provided in RSA 471-A: 20, III as inserted by section 1."

471-A: 2 General Conditions Precedent to Presumption of Abandonment. Unless otherwise provided, intangible personal property is subject to a presumption of abandonment under this chapter if the appropriate conditions leading to a presumption of abandonment, described in sections 3 through 11 of this chapter, are met, and if:

I. The last known address of the owner appearing on the records of the holder is in this state, whether or not the holder:

(a) is domiciled in this state or is engaged in or transacts business in this state, or

(b) if a court, public corporation, public authority, or public officer, is a court, public corporation, public authority, or public officer of this state or a political subdivision thereof; or,

II. No address of the owner appears on the records of the holder, and the holder is:

(a) domiciled in this state, or

(b) a court of this state, or

(c) a federal court within this state, or

(d) a public corporation, public authority, or public officer of this state or a political subdivision thereof; or,

III. (a) The last known address of the owner appearing on the records of the holder is in another state, and

(b) such other state makes no provision in its laws for the escheat of such property, and

(c) the holder is:

(i) domiciled in this state, or

(ii) a court of this state, or

(iii) a federal court within this state, or

(iv) a public corporation, public authority, or public officer of this state or a political subdivision thereof.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 3 Property Held by Financial Organizations. The following property held or owing by a financial organization is presumed abandoned:

I. Any deposits made with a financial organization and any funds paid toward the purchase of shares or other interest in any mutual or cooperative financial organization together with any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

II. Any sum payable on certified checks or on written instruments on which a financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has, within fifteen years, corresponded in writing with the financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the financial organization.

III. Any funds or other property removed from a safe deposit box or any other safekeeping repository on which the lease or rental period has expired due to nonpayment of rental charges or other reason, excluding any charges that may lawfully be withheld, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 4 Unclaimed Funds Held by Life Insurance Corporations. All moneys held and owing by any life insurance corporation to an insured or annuitant or other person entitled thereto shall be presumed abandoned if unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. If it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 5 Deposits and Refunds Held by Utilities. The following funds held or owing by any utility are presumed abandoned:

I. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appear-

ing on the records of the utility to be entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

II. Any sum which a utility has been ordered to refund and which was received for utility services rendered, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility to be entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 6 Undistributed Dividends and Distributions of Business Associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within fifteen years after the date prescribed for payment or delivery, is presumed abandoned.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 7 Property of Business Associations and Financial Organizations Held in Course of Dissolution. All property distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association or financial organization that is unclaimed by the owner at the end of the period provided by law or court decree for winding up its affairs and distributing or liquidating its assets, is presumed abandoned.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 8 Property Held by Fiduciaries. All property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

CROSS REFERENCE

Unclaimed estates, see RSA 561: 12-b (supp).

471-A: 9 Property Held by Courts and Public Officers and Agencies. All property held for the owner by any court, including a federal court, or any public corporation, public authority, or public officer of any state or a political subdivision thereof, that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A:10 Unclaimed Property Held by the Federal Government. All property, including choses in action in sums certain and all debts owed, entrusted funds, or other property held by the federal government or any agency, officer, or appointee thereof, is presumed abandoned only if the last known address of the owner is in this state and the property has been unclaimed for fifteen years. The federal government or a government officer or appointee thereof may deduct from the amount paid or delivered to the state treasurer the proportionate share of the actual and necessary costs of examining such records and reporting such information. This state shall hold the federal government harmless to the extent of the value of any property so paid or delivered from any claim which then exists or which hereafter may arise or be made in respect to property delivered to the state treasurer by the federal government.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A:11 Other Property Held for Another Person. All property not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became due, payable, or distributable is presumed abandoned; but this section shall not apply to unclaimed parimutuel ticket money and unclaimed sweepstakes prize money held or owing in this state in the ordinary course of the holder's business.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A:12 Report of Abandoned Property.

I. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

II. The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing, from the records of the holder, to be the owner of any property of the value of ten dollars or more presumed abandoned under this chapter; (items of less value to be reported under paragraph II-c of this section).

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured, annuitant, or beneficiary and his last known address appearing on the life insurance corporation's records.

(c) The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under ten dollars each may be reported in aggregate;

(d) Except for any property reported in aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Such other information as the state treasurer prescribes by rule as necessary for the administration of this chapter.

III. If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

IV. Each report shall be filed before November 1, as of the next preceding June 30, of the year in which due. Reports of presumably abandoned properties of the kinds described in sections 3, 4, 5 and 6 shall be filed in the year 1966, in the year 1970, and in every fifth year thereafter. Reports of presumably abandoned properties of all other kinds hereunder shall be filed annually. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

V. If the owner's claim has not been barred by the statute of limitations, the holder shall, before filing such report, communicate with the owner by first class mail at his last known address, if any such address is known or may be ascertained by due diligence, setting forth the steps necessary to rebut the presumption of abandonment.

VI. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

VII. The initial report filed under this chapter shall include all property as to which the time period resulting in a presumption of abandonment under the terms of this chapter commenced running on or after January 1, 1936, excepting property paid or delivered to the state treasurer prior to July 1, 1966 under other statutes.

VIII. The state treasurer shall keep a permanent record of all reports submitted to him.

IX. The state treasurer or any person or agency designated by him may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 13 Notice and Publication of Lists of Abandoned Property.

I. Within one hundred twenty days from the filing of the report required by section 12, the state treasurer shall cause notice to be published at least once each week for two successive weeks in a newspaper having general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

II. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property", and shall contain:

(a) The names in alphabetical order and last known addresses, if

any, of persons listed in the report and entitled to notice within the county (except as to items reported only in the aggregate.)

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing interest in the property by addressing an inquiry to the state treasurer.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the state treasurer, to whom all further claims must thereafter be directed.

(d) A statement that if no claim is filed with the state treasurer within fifteen years after the close of the calendar year in which any property presumed abandoned under this chapter is paid or delivered to the state treasurer, the property shall escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

III. A copy of the second published notice, in which shall be included the date on which the notice is to be published, shall be mailed to the holder on or before the date of publication.

IV. Within one hundred twenty days from the receipt of the report required by section 12, the state treasurer shall mail a notice to each person whose name is reported, having an address listed therein.

V. The mailed notice shall contain:

(a) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the state treasurer, to whom all further claims must be directed.

(d) A statement that if no claim is filed with the state treasurer within fifteen years after the close of the calendar year in which any property presumed abandoned under this chapter is paid or delivered to the state treasurer, the property shall escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A:14 Payment or Delivery of Abandoned Property.

I. Every person who has filed a report as required by section 12 shall within twenty days after the time specified in section 13 for claiming the

property from the holder pay or deliver to the state treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

II. The state treasurer may decline to receive any property reported which he deems to have a value less than the cost of giving notice or holding sale, or he may postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 12, the state treasurer shall be deemed to have elected to receive the custody of the property.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 15 Enforcement.

I. The state treasurer may bring an action in a court of appropriate jurisdiction, as specified in this section, to enforce the duty of any person under this chapter to permit the examination of the records of such person; or for a judicial determination that particular property known by the state treasurer to be held by any person is subject under law to escheat by this state pursuant to this chapter; or to enforce the delivery of any property to the state treasurer as required under this chapter.

II. The state treasurer may bring an action under this chapter in any court of this state of appropriate jurisdiction if:

(a) The holder is any person domiciled in this state, including any business association or financial organization organized under the laws of or created in this state, and any national bank or federal savings and loan association located in this state, but not including any federal court within this state.

(b) The holder is any person engaged in or transacting business in this state, although not domiciled in this state.

(c) The property is tangible personalty and is held in this state.

(d) The holder is any court of this state, or any public corporation, public authority, or public officer of this state or a political subdivision thereof.

III. In any case where no court of this state can obtain jurisdiction over the holder, the state treasurer may bring an action in any federal or state court with jurisdiction over the holder.

IV. (a) At the request of any other state, the attorney general of this state shall be empowered to bring an action in the name of such other state in any court of this state or federal court within this state, to enforce the

abandoned property laws of such other state against a holder in this state of property lawfully subject to escheat by such other state, if:

(1) The courts of such other state cannot obtain jurisdiction over the holder; and

(2) Such other state makes reciprocal provision in its laws for the bringing of an action by an officer of such other state in the name of this state at the request of the attorney general of this state, to enforce the provisions of this chapter against any person in such other state believed by the state treasurer of this state to hold property subject to a presumption of abandonment under this chapter, where the courts of this state cannot obtain jurisdiction over such holder; and

(3) The laws of such other state provide for payment to this state of reasonable costs incurred by the attorney general of this state in bringing an action under this section at the request of such other state.

(b) This state shall pay all reasonable costs incurred by any other state in any action brought by such other state at the request of the attorney general of this state under this section. Any state bringing such action shall be entitled additionally to a reward of fifteen per cent of the value, after deducting reasonable costs, of any property recovered for the state as a direct or indirect result of such action, such reward to be paid by the state treasurer.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 16 Relief from Liability.

I. Upon payment or delivery to the state treasurer of property presumed abandoned, the state shall assume custody and shall be responsible for all claims thereto.

II. Any person who pays or delivers abandoned property to the state treasurer under this chapter and has in all other respects complied with the provisions of this chapter, is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

III. Any holder who has paid or delivered to the state treasurer moneys presumed abandoned may make payment therefor within the time limited by section 21 to any person appearing to be the owner, and shall be reimbursed by the state treasurer upon proof of such payment and proof that the payee was entitled thereto. Any holder who has delivered to the state treasurer property, including a certificate of any interest in a business association, pursuant to this chapter, may reclaim such property if still in the possession of the state treasurer, without payment of any fee or other charges upon proof that the owner thereof has claimed such property from the holder.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 17 Income Accruing After Payment or Delivery. When property other than money is delivered to the state treasurer under this chap-

ter, any dividends, interest, or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into money, shall upon receipt be credited by the state treasurer to the owner's account. Except for amounts so credited, the owner is not entitled to receive income or other increments or money or other property paid or delivered to the state treasurer under this chapter.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 18 Periods of Limitation Not a Bar. The expiration of any period of time, specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the state treasurer; but this section shall not be construed to affect any right of defense which became vested prior to the effective date of this chapter.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 19 Sale of Abandoned Property.

I. All abandoned property delivered to the state treasurer under this chapter, other than money or securities listed on any established stock exchange, may be sold by him to the highest bidder at public sale in whatever place in this state or elsewhere that affords in his judgment the most favorable market for the property involved. The state treasurer may decline the highest bid and re-offer the property for sale if he considers the price bid insufficient.

II. Securities listed on an established stock exchange may be sold by the state treasurer. Any sale shall be at the prevailing price on that exchange.

III. Any sale of abandoned property, other than money or securities listed on any established stock exchange, held under this section shall be preceded by a single publication of notice thereof at least three weeks in advance of sale in a newspaper having general circulation in the county where the property is to be sold.

IV. The purchaser at any sale conducted by the state treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

V. No action shall be brought or maintained by any person against the state or any officer thereof for or on account of any transaction entered into pursuant to and in accordance with the provisions of this section.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 20 Deposit of Funds.

I. All funds received under this chapter, including the proceeds from the sale of property under section 19, shall be deposited by the state treasurer in the state treasury, except that the state treasurer shall retain at all times in a separate trust fund the sum of twenty-five thousand dollars, from which he shall promptly pay all claims allowed as hereinafter provided.

II. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and the name and last known address of each insured person, beneficiary, or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

III. Before making any deposit in the state treasury, the state treasurer may deduct:

- (a) any costs in connection with the sale of abandoned property.
- (b) any costs of mailing and publication in connection with the abandoned property.
- (c) reasonable service charges.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 21 Claims for Abandoned Property.

I. Any person, not including another state, claiming an interest in property paid or delivered to the state treasurer may file a claim thereto or to the proceeds of the sale thereof within fifteen years from the last day of the calendar year in which such property is paid or delivered to the state treasurer under this chapter.

II. The state treasurer shall consider each claim within ninety days after it is filed. He shall hold a hearing, if the claimant requests, and receive evidence concerning the claim.

III. The state treasurer shall make a written finding on each claim presented or heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be a public record.

IV. The state treasurer shall pay each claim allowed without deduction for costs of notices or sale or for any service charges.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 22 Judicial Action Upon Determinations. Any person aggrieved by a finding of the state treasurer under section 21 or upon whose claim the state treasurer has failed to act within ninety days after the filing of the claim may file a petition to establish his claim in the superior court for Merrimack county. The proceeding shall be brought within ninety days after the decision of the state treasurer or within one hundred eighty days from the filing of the claim if the state treasurer fails to act. A copy

of the petition and order of notice thereon shall be served upon the state treasurer, who shall have not less than fourteen days within which to respond by answer. The proceeding shall be tried de novo without a jury. If judgment is rendered in favor of the petitioner, the state treasurer shall make payment as provided in paragraph IV of section 21.

Source: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 23 Escheat Proceedings.

I. Within ninety days after the close of the fifteenth calendar year after the year in which any property presumed abandoned under this chapter is paid or delivered to the state treasurer, if no claim therefor has been made and established by any person not including another state, entitled thereto, the state treasurer shall commence a civil action in the superior court for Merrimack county for a determination that such property shall escheat to the state; but if during, and at the expiration of, such ninety days, a final judgment is pending in a court action previously brought by a claimant under section 22, or if a person who has filed a claim to the property within the period prescribed by paragraph I of section 21 remains entitled at the expiration of such ninety days to bring a court action under section 22, the state treasurer shall commence his civil action after a final court judgment has been rendered adversely to the petitioning claimant, or after the expiration of the period in which a claimant would be entitled to bring a court action under section 22. The hearing in the action brought by the state treasurer shall commence not less than forty days after the date of entry of the action. The state treasurer may postpone the bringing of such action until the end of a subsequent calendar year whenever insufficient abandoned property has accumulated in his custody to justify the expense of such proceedings.

II. At the time such action is commenced, the state treasurer shall cause notice thereof to be published once each week for two successive weeks in a newspaper having general circulation in the county in which is situated the last known address of the owner according to the records of the state treasurer. If no address is listed, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within the state. Such notice shall be entitled "Notice of Proceedings to Declare Certain Abandoned Property Escheated to the State of New Hampshire" and shall include the following matters:

- (a) the name and last known address of the owner (if previously reported);
- (b) a brief description of the property;
- (c) the name of the prior holder or holders;
- (d) the amount or value of the property (excepting items reported only in the aggregate, which shall be listed as a lump sum);
- (e) a statement that the property was unclaimed for at least fifteen years while in the possession of the prior holder or holders and was un-

claimed for fifteen years after it was paid or delivered to the state treasurer pursuant to this chapter;

(f) a statement that a complaint has been filed in the action for escheat;

(g) the place, time and date of the hearing;

(h) a direction that unless any person claiming to be entitled to the property, or his representative, makes claim for the property in the manner provided in section 21 before the hearing, or appears at the hearing to substantiate his claim, the property shall escheat to the state and all right, title or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

III. Also at the time such action is commenced, the state treasurer shall mail to the last known address of the owner according to the records of the state treasurer a notice alike in all respects to the published notice required under the preceding subsection.

IV. If no person shall file a claim, or appear at the hearing to substantiate a claim, or where the court shall determine that a claimant is not entitled to the property claimed by him, then the court, if satisfied by evidence that the state treasurer has substantially complied with this chapter, shall enter a judgment that the subject property has escheated to the state and that all right, title or interest therein of the owners is terminated and all claims of the owners thereto forever barred.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 24 Claims by Other States.

I. At any time after property has been paid or delivered to the state treasurer under this chapter, and notwithstanding any decree by any court of this state under section 23 that such property is escheated to this state, any other state shall be entitled to present to the state treasurer a claim that such other state has a superior right to escheat such property because:

(a) Although no address of the owner of the property appeared on the records of a holder domiciled in this state, including a court of this state, a federal court within this state, or a public corporation, public authority, or public officer of this state or a political subdivision thereof, when the property was presumed abandoned under this chapter, the other state possesses proof that the last known address of the owner was in fact in such other state; or,

(b) The last known address of the owner of the property appearing on the records of a holder domiciled in this state, including a court of this state or federal court within this state, or a public corporation, public authority, or public officer of this state or a political subdivision thereof, was in such other state when the property was presumed abandoned under this chapter, and such other state at that time did not provide in its laws for the escheat of such property, but currently so provides.

II. The state treasurer shall hold a hearing on each such claim within ninety days after it is filed. He shall make a written finding on each claim heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be a public record. He shall allow a claim if reasonably satisfied by proof of the superior right of the other state.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 25 Penalties.

I. Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of ten dollars for each day such report is withheld or such duties not performed, but not more than five hundred dollars.

II. Any person who wilfully refuses to pay or deliver abandoned property to the state treasurer as required under this chapter shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not more than six months, or both, in the discretion of the court.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 26 Rules and Regulations. The state treasurer may make such rules and regulations as he finds reasonably necessary to administer and enforce the provisions of this chapter.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 27 Excepted Property. This chapter shall not apply to any property that has been presumed abandoned or has escheated under the laws of another state prior to the effective date of this chapter, nor to any property covered by RSA 471, 489 and 561.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

471-A: 28 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

SOURCE: 1965, 214: 1, eff. Jan. 1, 1966.

EXHIBIT X

1967 INDIANA UNCLAIMED PROPERTY ACT

CHAPTER 7—UNCLAIMED PROPERTY

SECTION.	SECTION.
51-701. Short title.	51-720. Relief from liability by payment or delivery.
51-702. Uniformity of interpretation.	51-721. Income accruing after payment or delivery.
51-703. Definitions and use of terms.	51-722. Period of limitation not a bar.
51-704. Property held by banking or financial organizations or business associations.	51-723. Sale of abandoned property.
51-705. Unclaimed funds held by life insurance company.	51-724. Deposits of funds—Trust and expense fund—Records of deposits.
51-706. Deposits and refunds held by utilities.	51-725. Segregation of property custody fund and abandoned property fund—Investment of excess funds—Payment of claims.
51-707. Undistributed dividend and distributions of business associations and banking or financial organizations.	51-726. Claim for abandoned property paid or delivered.
51-708. Property of business associations and banking or financial organizations held in course of dissolution.	51-727. Determination of claims—Hearings.
51-709. Property held by fiduciaries.	51-728. Judicial review.
51-710. Property held by courts and public officers and agencies.	51-729. Election to take payment or delivery — Destruction of property which has no obvious commercial value.
51-711. Miscellaneous personal property held for another person.	51-730. Examination of records.
51-712. Reciprocity for property presumed abandoned or escheated under the laws of another state.	51-731. Proceeding to compel delivery of abandoned property.
51-713. Opening of safe deposit boxes.	51-732. Appeals from courts.
51-714. Report of business association's and banking or financial organization's dissolution.	51-733. Offenses and penalties.
51-715. Report of abandoned property.	51-734. Purpose of act.
51-716. Notice and publication of lists of abandoned property.	51-735. Cooperation by other governmental bodies.
51-717. Payment or delivery of abandoned property.	51-736. Adjudication of abandonment.
51-718. Voluntary delivery of contents of safe deposit box.	51-737. Nonresident service.
51-719. Voluntary delivery of property distributed in voluntary dissolutions.	51-738. Decree for descent to state.
	51-739. Administration of estates of deceased, disappeared, or missing persons.
	51-740. Reports.
	51-741. Proof required.
	51-742. Ferrrets—Limitation on fees.
	51-743. Rules and regulations.

51-701. Short title.—This act [§§ 51-701—51-743] may be cited as the "Uniform Disposition of Unclaimed Property Act." [Acts 1967, ch. 253, § 1, p. 659.]

Title of Act. The title of Acts 1967, ch. 253, reads: "An act relating to the disposition of unclaimed property and its collection and safekeeping by and its escheat to the state of Indiana." In force March 10, 1967.

Comparative Legislation. Abandoned or unclaimed property:

Ark. Stats. 1947, §§ 50-601—50-605.
Cal. Deering's Codes, Civil Proc. Code, §§ 1500-1527.
Conn. Gen. Stats., §§ 3-56a—3-74a.
Del. Code Ann., tit. 12, §§ 1130-1194.
Ky. Rev. Stat., §§ 393.010-393.990.
Mass. Gen. Laws 1932, ch. 200A, §§ 1-17.
Mich. Comp. Laws 1948, §§ 434.1-434.112.
N. Y. McKinney's Consol. Laws, Abandoned Property Law, §§ 101-1502.

Uniform Disposition of Unclaimed Property Act:

Ariz. Rev. Stat., §§ 44-351—44-378.
Cal. Deering's Codes, Civil Proc. Code, §§ 1500-1527.
Fla. Stat. Ann., §§ 717.01-717.30.
Idaho Code 1947, §§ 14-501—14-530.
Ill. Rev. Stat. 1965, ch. 141, §§ 101-130.
Mont. Rev. Codes 1947, §§ 67-2201—67-2230.
N. H. Rev. Stat. 1955, §§ 471-A:1—471-A:23.
N. M. Stat. 1953, §§ 22-22-1—22-22-29.
Ore. Rev. Stat., §§ 98.302-98.436.
Utah. Code Ann. 1953, §§ 78-44-1—78-44-28.
Vt. Stat. Ann., tit. 27, §§ 1208-1238.
Va. Code 1950, §§ 55-210.1—55-210.29.
Wash. Rev. Code, §§ 63.28.070-63.28-920.

51-702. Uniformity of interpretation.—This act [§§ 51-701—51-743] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Acts 1967, ch. 253, § 2, p. 659.]

51-703. Definitions and use of terms.—As used in this act [§§ 51-701—51-743], unless the context otherwise requires:

(a) "Attorney-General" means the attorney-general of the state of Indiana or his deputy or representative duly designated in writing.

(b) "Banking organization" means any bank and/or trust company, either state or national, savings bank, industrial bank, land bank, safe deposit company, a private banker engaged in business in this state, a bank of discount and deposit, or loan and trust and safe deposit company.

(c) "Business association" means any corporation, including both for profit and not-for-profit corporations, joint stock company, business trust, partnership, eleemosynary organization or cooperative association and every other association or organization or [of] two [2] or more individuals.

(d) "Engaging in business in this state" means the engaging in any transaction or the doing of any business within this state, including, but not limited to, the owning or holding of property in this state or holding property for a person whose last known name and address as shown on the books and records of the holder is in this state.

(e) "Financial organization" means any savings and loan association, either state or national, building and loan association, either state or national, industrial loan company, credit union, business association which issues traveler's checks, rural loan and savings association, guaranty loan and savings association, mortgage guarantee company, savings bank, small loan company or investment company engaged in business in this state.

(f) "Holder" means any person having possession, custody or control of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(g) "Intangible personal property" means intangible personal property, of every kind or description, and includes, but not by way of limitation, (1) money; (2) bills of exchange; (3) stocks, bonds and other securities; (4) credits, including wages and other allowances for services earned or accrued, also including funds due and payable

on certified checks or on written instruments on which a banking or financial institution or any other holder is liable, including but not limited to certificates of deposit, drafts, cashier checks, money orders and traveler's checks, also proceeds held for unredeemed gift certificates; (5) demand savings or matured time deposits, howsoever evidenced, together with any interest or dividend thereon, excluding any charges which may lawfully be withheld; (6) dividends, cash or stock; (7) certificates of membership in a corporation or association; (8) amounts due and payable pursuant to the terms of any policy of insurance; also moneys held and owing by any life insurance company engaged in business in this state; (9) security deposits; (10) funds deposited by a holder with fiscal agents or fiduciaries for payment to an owner of dividends, coupon interest and liquidation value of stocks and bonds; (11) funds to redeem stocks and bonds; (12) amounts refundable from rates or charges heretofore or hereafter collected by a utility for utility services lawfully furnished by it, which have been or shall hereafter lawfully be ordered refunded to consumers or other persons entitled thereto and any interest thereon; (13) money owing under profit-sharing plans; (14) funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest thereon; and (15) all other liquidated choses in action of whatsoever kind or character.

(h) "Life insurance company" means any association or corporation engaging within this state in the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(i) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his heirs, legal representative, successor or assign.

(j) "Person" means any individual, business association, banking organization, financial organization, public authority, estate, trust, two [2] or more persons having a joint or common interest, or any other legal or commercial entity; the United States government, including any officer, agency, department, authority, instrumentality, board, bureau, or court thereof, and any corporation organized by the United States for public purposes; the state of Indiana, including any officer, agency, board, bureau, commission, division, department or court thereof or any body politic and corporate created by the state of Indiana for public purposes, and any political subdivision of the state of Indiana, including any municipality, county, civil township, civil incorporated city or town, any public school corporation, and university or college supported in part by state funds, any other territorial subdivision of the state recognized or designated in any law, including judicial circuits, any public utility entity not privately owned, any special taxing district or entity and any public improvement district authority or entity authorized to levy taxes or assessments, but shall not include any retirement system supported entirely or in part by the state of Indiana.

(k) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [Acts 1967, ch. 253, § 3, p. 659.]

51-704. Property held by banking or financial organizations or business associations.—The following property held or owing by a banking or financial organization or a business association is presumed abandoned:

(a) Any demand, savings or matured time deposit made in this state or any demand, savings or matured time deposit made in another state by an owner whose last known address as shown on the books of the organization or association is in this state, together with any interest or dividend thereon, excluding any charges which may lawfully be withheld, if the owner has not within the immediately preceding seven [7] years:

- (1) Increased or decreased the amount of the deposit; or
- (2) Presented the pass book or other similar evidence of deposit for the crediting of interest; or
- (3) Corresponded in writing with the banking or financial organization or business association concerning the deposit; or
- (4) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking or financial organization or business association.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding seven [7] years:

- (1) Increased or decreased the amount of the funds or deposit; or
- (2) Presented an appropriate record for the crediting of interest or dividends; or
- (3) Corresponded in writing with the financial organization concerning the funds or deposit; or
- (4) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any funds paid in another state by an owner whose last known address is in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in another state by an owner whose last known address is in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding seven [7] years:

- (1) Increased or decreased the amount of the funds or deposit; or
- (2) Presented an appropriate record for the crediting of interest or dividends; or
- (3) Corresponded in writing with the financial organization concerning the funds or deposit; or
- (4) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(d) Any sum payable on any check certified in this state or on any written instrument issued in this state on which a banking or financial organization or business association is directly liable, including by way of illustration but not of limitation, a certificate of deposit, draft, money order and traveler's check, that, with the exception of traveler's checks, has been outstanding for more than seven [7] years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen [15] years from the date of its issuance, unless the owner has within the seven [7] year period, or within the fifteen [15] year period in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

Any sums payable on any check certified in another state or on any written instrument issued in another state which would be presumed to be abandoned pursuant to this act [§§ 51-701-51-743] if

certified or issued in this state shall be presumed to be abandoned if the last known address of the owner, as shown on the books and records of the holder, is in this state.

If no address of the owner or other person entitled to the funds is known to the holder, it is presumed that the last known address of the owner or person entitled to the funds is the same as the address of the place where the check or instrument was certified or issued.

(e) 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 amount arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven [7] years from the date on which the lease or rental period expired.

Any intangible personal property removed from a safe deposit box or any other safekeeping repository in another 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 for more than seven [7] years from the date on which the lease or rental period expired by any owner whose last known address as shown on the books and records of the holder is within this state shall be presumed to be abandoned. [Acts 1967, ch. 253, § 4, p. 659.]

51-705. Unclaimed funds held by life insurance company.—(a) Unclaimed funds, as defined in this section, held and owing by a life insurance company organized under or created by the laws of this state shall be presumed abandoned. Unclaimed funds, as defined in this section, held and owing by a life insurance company organized under or created by the laws of another state shall be presumed abandoned if the last known address, according to the records of the company, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the company or if it is not definite and certain from the records of the company what person is entitled to the funds, it is presumed that the last known address of the insured or annuitant is the same as the last known address of the insured or annuitant according to the records of the company.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance company unclaimed and unpaid for more than seven [7] years after the moneys became due and payable as established from the records of the company under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven [7] years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded with the life insurance company concerning the policy. Moneys otherwise payable according to the records of the company are deemed due and payable although the policy or contract has not been surrendered as required. [Acts 1967, ch. 253, § 5, p. 659.]

51-706. Deposits and refunds held by utilities.—The following funds held and owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be

furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven [7] years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven [7] years after the date it became payable in accordance with the final determination or order providing for the refund. [Acts 1967, ch. 253, § 6, p. 659.]

51-707. Undistributed dividend and distributions of business associations and banking or financial organizations.—(1) Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association, a banking or a financial organization for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association, banking or financial organization concerning it, within seven [7] years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association, a banking or a financial organization organized under the laws of or created in this state; or

(b) It is held or owing by a business association, a banking or a financial organization engaged in business in this state, but not organized under the laws of or created in this state, and the records of the business association, or banking or financial organization indicate that the last known address of the person entitled thereto is in this state.

(2) Any ownership interest in a business association, a banking or financial organization normally evidenced by a certificate of ownership, or any ownership of a debt of a business association, a banking or financial organization normally evidenced by a written instrument, as described in subsection (1) of this section, for which the owner has neither claimed his ownership or creditor's interest or any dividend, profit, distribution, interest, payment on principal or other sum due thereon, nor corresponded in writing with the business association, banking or financial organization concerning same within the immediately preceding seven [7] years, is presumed abandoned if:

(a) It is an ownership interest in, or a debt of a business association, a banking or financial organization organized under the laws of or created in this state; or

(b) It is an ownership interest in or debt of a business association, a banking or financial organization not organized under the laws of or created in this state, and the records of the business association, or banking or financial organization indicate that the last known address of the person entitled thereto is in this state. [Acts 1967, ch. 253, § 7, p. 659.]

51-708. Property of business associations and banking or financial organizations held in course of dissolution.—All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two [2] years after the date for final distribution, is presumed abandoned.

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization or financial organization organized under the laws of or created in another state, that is unclaimed within two [2] years after the date for final distribution by an owner whose last known address as shown on the books and records of the corporation or organization is within this state, is presumed abandoned. [Acts 1967, ch. 253, § 8, p. 659.]

51-709. Property held by fiduciaries.—All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven [7] years after the final date for distribution of such property and the cessation of all active fiduciary duties as required by law or the instrument under which the fiduciary is acting, increased or decreased the principal, accepted payment of principal or income, corresponded in writing with the fiduciary concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, banking or financial organization engaged in business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person. [Acts 1967, ch. 253, § 9, p. 659.]

51-710. Property held by courts and public officers and agencies.—All intangible personal property held for the owner in this state or held in another state or district of the United States for an owner whose last known address is within this state by the United States government, the state of Indiana, or any political subdivision thereof, all as defined in section 3 (j) [subsection (j) of § 51-703] herein, or by any officer of any state or federal court, that has remained unclaimed by the owner for more than seven [7] years is presumed abandoned, except that this provision shall not affect such property in the custody or control of any state or federal court in any pending action. [Acts 1967, ch. 253, § 10, p. 659.]

51-711. Miscellaneous personal property held for another person.—All intangible personal property not otherwise covered by this article, including any income or increment thereon and after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business or held in another state for an owner whose last known address is within this state and has remained unclaimed by the owner for more than seven [7] years after it became payable or distributable is presumed abandoned. [Acts 1967, ch. 253, § 11, p. 659.]

51-712. Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of sections four, five, seven, eight, nine, ten and eleven [§§ 51-704, 51-705, 51-707—51-711] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this article if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

The attorney-general is hereby empowered to contract or agree, with the approval of the governor of the state of Indiana, with any other state of the United States, to transfer to that state property otherwise presumed abandoned pursuant to the terms of this act and collected by the attorney-general, but held for or owed or distributable to an owner whose last known address is in that state, when such other state contracts or agrees to transfer to the attorney-general for disposition pursuant to the terms of this act [§§ 51-701—51-743], property otherwise presumed abandoned in that state, but held for or distributable to an owner whose last known address is within this state. [Acts 1967, ch. 253, § 12, p. 659.]

51-713. Opening of safe deposit boxes.—Every holder of funds or other personal property, tangible or intangible, who shall remove such property from a safe deposit box or any other safekeeping repository in this state on and after the effective date of this act [§§ 51-701—51-743] because the lease or rental period has expired due to nonpayment of rental charges or other reason, shall cause an inventory to be made of the contents of such box or repository at the time of its opening, and shall attach a copy of such inventory to the holder's next report required to be made to the attorney-general pursuant to section fifteen [§ 51-715] of this act. [Acts 1967, ch. 253, § 13, p. 659.]

51-714. Report of business association's and banking or financial organization's dissolution.—Any business association, banking organization or financial organization organized under the laws of or created in this state and undergoing voluntary dissolution, shall file a notice of such voluntary dissolution with the attorney-general within ten [10] days after the adoption of the resolution to dissolve by its members or shareholders. [Acts 1967, ch. 253, § 14, p. 659.]

51-715. Report of abandoned property.—(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act [§§ 51-701—51-743] shall report to the attorney-general of the state of Indiana with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars [\$50.00] each may be reported in aggregate in the absence of a request by the attorney-general to the holder that such items be reported individually;

(2) The name, the United States social security account number and the United States income tax number, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars [\$50.00] or more presumed abandoned under this article;

(3) In case of unclaimed funds of life insurance companies, the full name of the insured or annuitant and his last known address according to the life insurance company's records;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the attorney-general prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The reports required by this section shall be filed before November first of each year as of June thirtieth next preceding, but the report of life insurance companies shall be filed before May first of each year as of December thirty-first next preceding, except that the initial report required under this act shall be filed not later than November 1, 1967 and shall include all items of property presumed abandoned under the act as of the preceding June thirtieth or December thirty-first as the case may be. The attorney-general may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by a statute of limitations, the holder shall, before filing the annual report, attempt to communicate with the owner so that the owner may take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner. A notice from the holder to the owner sent to the owner's last known address by United States mail, postage prepaid, shall satisfy the requirements of this subsection (e).

(f) Every banking organization, business association, or financial organization engaged in business in this state or organized under or created pursuant to the laws of this state, and every utility and life insurance company, as defined herein, if it shall not have been the holder of abandoned property on any date for which a report is required by this act from such holders, shall, on or before the same day on which reports from holders of such property are required, file with the attorney-general a verified statement that said banking organization, business association, financial organization, utility or life insurance company was not, on the date covered by the report required of holders on that day, the holder of property presumed abandoned under this act.

(g) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. [Acts 1967, ch. 253, § 15, p. 659.]

51-716. Notice and publication of lists of abandoned property.—

(a) Within one hundred twenty [120] days from the filing of the report required by section fifteen [§ 51-715], the attorney-general shall cause notice to be published at least once each week for two [2] successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice or, in the discretion of the attorney-general in the county in which the holder of the abandoned property has his principal place of business within this state, or, in the case of certified checks, traveler's checks or money orders for which no address is listed, or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property certified or issued said check or order.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the attorney-general.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five [65] days from the date of the second published notice, the abandoned property shall be placed in the custody of the attorney-general, to whom all further claims must thereafter be directed. The date of the sixty-fifth day shall be specified in the notice.

(c) The attorney-general is not required to publish in such notice any item of less than fifty dollars [\$50.00] unless he deems such publication to be in the public interest.

(d) Within five [5] days after the date specified in the published notice, the attorney-general shall mail to each holder a notice specifying the date on which the holder's payment or delivery of abandoned property is due to the attorney-general pursuant to section seventeen [§ 51-717]. [Acts 1967, ch. 253, § 16, p. 659.]

51-717. Payment or delivery of abandoned property.—Every holder of property presumed to be abandoned under this act [§§ 51-701—51-743] shall pay or deliver all such property to the attorney-general. Every person who has filed a report as provided by section fifteen [§ 51-715] shall within twenty-five [25] days after the date specified in the notice published pursuant to section sixteen [§ 51-716] for claiming the property from the holder pay or deliver to the attorney-general all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section sixteen [§ 51-716], or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the attorney-general, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment. Every holder of property presumed to be abandoned under this act who fails to file the report required by section fifteen [§ 51-715] shall within twenty-five [25] days after the date on which the report was due pay or deliver to the attorney-general all property presumed abandoned which he holds.

When the property to be delivered to the attorney-general is either an ownership interest normally evidenced by a certificate of ownership or an ownership of a debt normally evidenced by a written instrument and is considered abandoned pursuant to section 7(2) [§ 51-707(2)] of this act, any business association, banking or financial organization in which the ownership interest is owned or which is the creditor, shall transfer the ownership interest or the ownership of the debt to the state of Indiana by the issuance of a new certificate of ownership, or written instrument evidencing the debt, as the case may require, in the name of the state of Indiana and the delivery of such certificate or instrument to the attorney-general. [Acts 1967, ch. 253, § 17, p. 659.]

51-718. Voluntary delivery of contents of safe deposit box.—Any holder of funds or other personal property, tangible or intangible,

which has been removed from a safe deposit box or any other safe-keeping repository in this state because the lease or rental period has expired due to nonpayment of rental charges or other reason, may voluntarily deliver or pay to the attorney-general such property at any time after the date on which such property is so removed and prior to the date on which it is presumed to be abandoned, subject to such reasonable conditions as the attorney-general may impose by rule, if the owner has not, prior to the date of delivery or payment to the attorney-general, claimed said property. [Acts 1967, ch. 253, § 18, p. 659.]

51-719. Voluntary delivery of property distributed in voluntary dissolutions.—Any holder of intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, may, after the date of such dissolution and prior to the date on which such property is presumed to be abandoned pursuant to this act [§§ 51-701—51-743], pay or deliver said intangible personal property to the attorney-general, subject to such reasonable conditions as the attorney-general may impose by rule, if the owner has not, prior to the date of delivery or payment to the attorney-general, claimed such property. [Acts 1967, ch. 253, § 19, p. 659.]

51-720. Relief from liability by payment or delivery.—The payment or delivery of property to the attorney-general, whether voluntary or required, 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, his heirs, personal representatives, successors and assigns by such delivery or payment, regardless of whether such property is in fact and in law abandoned property, and such delivery and payment may be pleaded as a bar to recovery and shall be a conclusive defense in any suit or action brought by such owner, his heirs, personal representatives, successors or assigns, or any claimant against the holder by reason of such delivery or payment; Provided, That nothing contained in this section shall be construed as an assumption by the state or the attorney-general of any liability of the holder to the owner which is greater than the value of said property at the time of its delivery to the attorney-general, nor as depriving such owner, his heirs, personal representatives, successors and assigns of the right of redemption provided in this act [§§ 51-701—51-743].

The attorney-general shall reimburse any holder which is a national bank and which can not be relieved of such liability by this section for all liability to the owner, his heirs, personal representatives, successors and assigns, incurred by reason of any such delivery or payment, to the extent of the value of the property on the date on which it was paid or delivered to the attorney-general, or, if said property has been sold by the attorney-general pursuant to this act, to the extent of the value of the property on the date of sale.

In the event legal proceedings are instituted against the holder by any other state or states in which the laws concerning abandoned property contain reciprocal provisions as set out in section twelve [§ 51-712] hereof, in any state or federal court or on the holder's contract with the owner of such property by the owner, his heirs, personal representatives, successors, or assigns, with respect to unclaimed funds or abandoned property previously paid or delivered to the attorney-general; the holder shall give written notification to the attorney-general of such proceedings within ten [10] days after

service of process, or in the alternative at least ten [10] days before the return date or date on which an answer or similar pleading is due, or any extension thereof secured by the holder. The attorney-general may take such action as he deems necessary or expedient to protect the interests of the state of Indiana, including intervention in such cause. The attorney-general by written notice prior to the return date or date on which an answer or similar pleading is due or any extension thereof secured by the holder, shall either inform the holder that the attorney-general will actively defend in such proceedings or that no defense need be entered in such proceedings. If a direction is received from the attorney-general that the holder need not make a defense, such shall not preclude the holder from entering a defense in its own name if it should so choose. If the holder has properly notified the attorney-general pursuant to this paragraph and a judgment is entered against the holder for any amount paid to the attorney-general under this act, the treasurer of the state of Indiana shall, upon being furnished with proof of payment in satisfaction of such judgment, reimburse the holder the amount so paid.

Upon the payment or delivery of property to the attorney-general pursuant to this act, the state shall assume custody and shall be responsible for the safekeeping thereof.

Any holder who has paid moneys to the attorney-general pursuant to this act may make payment to any person appearing to such holder to be entitled to payment for a certified check, certificate of deposit, bank draft, money order, cashier's check or traveler's check, and upon proof of such payment and proof that the payee was entitled thereto, the attorney-general shall forthwith reimburse the holder for the payment without deductions of any service, administration or other charge. [Acts 1967, ch. 253, § 20, p. 659.]

51-721. Income accruing after payment or delivery.—When property is paid or delivered to the attorney-general under this act [§§ 51-701—51-743], the owner is not entitled to receive income or other increments accruing thereafter, unless such property was paid or delivered pursuant to section eighteen [§ 51-718] or nineteen [§ 51-719] of this act. [Acts 1967, ch. 253, § 21, p. 659.]

51-722. Period of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act [§§ 51-701—51-743] or to pay or deliver abandoned property to the attorney-general. [Acts 1967, ch. 253, § 22, p. 659.]

51-723. Sale of abandoned property.—(a) All abandoned property other than money delivered to the attorney-general under this act [§§ 51-701—51-743] shall within one [1] year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved except that in the case of property other than money delivered to the attorney-general under section eighteen [§ 51-718] or nineteen [§ 51-719], such property shall be sold within one [1] year after the date on which it is first presumed to be abandoned. The attorney-general may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three [3] weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the attorney-general pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The attorney-general shall execute all documents necessary to complete the transfer of title. [Acts 1967, ch. 253, § 23, p. 659.]

51-724. Deposits of funds—Trust and expense fund—Records of deposits.—(a) All funds received by the attorney-general pursuant to section eighteen [§ 51-718] or nineteen [§ 51-719] of this act shall forthwith be delivered by the attorney-general to the treasurer of the state of Indiana for deposit in a special fund to be known as the "property custody fund." Subject to any claim of the owner duly allowed by the attorney-general pursuant to this act [§§ 51-701—51-743], such funds, together with all income and increment thereon, shall be held in the property custody fund for safekeeping until the date on which such funds are presumed to be abandoned property pursuant to this act and transferred to the abandoned property fund as hereinafter required. On the day of first publication of any notice required by section sixteen [§ 51-716] next following the date on which the property is presumed to be abandoned, the attorney-general shall cause notice to be published of such property as required in section sixteen [§ 51-716] and notice to be mailed to each person having an address listed as required of holders in section fifteen [§ 51-715]. Within twenty-five [25] days after the specified date in the notice published pursuant to section sixteen [§ 51-716] for claiming the property from the property custody fund, the treasurer of the state of Indiana, upon order of the attorney-general, shall transfer the funds, together with all income and increment thereon, to the abandoned property fund created by this act, unless the attorney-general has before the time for the transfer duly allowed a claim of the owner, and thereafter such funds shall be considered abandoned property rather than property received pursuant to section eighteen [§ 51-718] or nineteen [§ 51-719] for the purposes of this act.

(b) All other funds received under this act, including the proceeds from the sale of abandoned property under section twenty-three [§ 51-723], shall forthwith be transferred by the attorney-general to the treasurer of the state of Indiana for deposit in a special fund to be known as the "abandoned property fund."

(c) From the proper fund created by this act the treasurer shall make prompt payment of claims duly allowed by the attorney-general as hereinafter provided, and shall pay, on order of the attorney-general, the necessary costs of selling abandoned property, of mailing notices, of making publications required by this act, and of paying other operating expenses and administrative expenses, including salaries and wages, reasonably incurred by the attorney-general in the administration and enforcement of the provisions of this act. At any time when the balance of said fund shall exceed five hundred thousand dollars [\$500,000], the treasurer may, and at least once every fiscal year shall, transfer to the common school fund of the state of Indiana the balance of the abandoned property fund which shall exceed five hundred thousand dollars [\$500,000]. Should any claim be allowed or refund ordered under the provisions of this act in excess of five hundred thousand dollars [\$500,000], the treasurer shall transfer from the general funds of the state otherwise not appropriated sufficient

money for prompt payment of such claim, and sufficient funds are hereby appropriated to the treasurer for such purpose, and the treasurer shall make prompt payment thereof.

(d) Before making any deposit to said fund, the attorney-general shall record the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property, and the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance company, its number, the name of the corporation, and the amount due. Such records shall be available for public inspection at all reasonable business hours. [Acts 1967, ch. 253, § 24, p. 659.]

51-725. Segregation of property custody fund and abandoned property fund—Investment of excess funds—Payment of claims.—The treasurer of the state of Indiana shall keep safely the funds in the property custody fund and the abandoned property fund, and such funds shall not be transferred or assigned except as specifically authorized and directed in this act [§§ 51-701—51-743]. At any time, upon certification of the attorney-general and the treasurer of state that there is cash on deposit in either fund in excess of the cash requirements of the fund anticipated for the next succeeding semi-annual fiscal period, the state board of finance may authorize the treasurer of state to invest and reinvest said money as authorized for other funds of the state by the Depository Act of 1937 [§§ 61-622—61-663], as it has been and may hereafter be amended, including the purchase of certificates of deposit, provided that no investment shall be made in a security or deposit the maturity or redemption date of which is more than six [6] months after the date of purchase, subscription, or deposit. Any interest or other accretions derived from any such investments shall become a part of the fund invested.

Sufficient money from the abandoned property fund is hereby appropriated to the treasurer of the state of Indiana to pay claims, costs and expenses ordered paid from that fund pursuant to this act, and sufficient money from the property custody fund is hereby appropriated to the treasurer of the state of Indiana to pay claims ordered paid from that fund pursuant to this act. [Acts 1967, ch. 253, § 24a, p. 659.]

51-726. Claim for abandoned property paid or delivered.—Any person claiming an interest in any property paid or delivered to the attorney-general under this act [§§ 51-701—51-743] may file a claim thereto or to the proceeds from the sale thereof on a form prescribed by the attorney-general, together with such reasonable proofs as the attorney-general may specify by rule. A claim may be filed at any time within twenty-five [25] years after the date on which the property was first presumed abandoned pursuant to the terms of this act, notwithstanding the expiration of any other period of time specified by statute or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property. [Acts 1967, ch. 253, § 25, p. 659.]

51-727. Determination of claims—Hearings.—(a) The attorney-general shall promptly consider any claim filed in proper form and supported by proofs as required by this act [§§ 51-701—51-743], and shall allow or disallow it within ninety [90] days after its filing. If he is satisfied from the proofs submitted that such claim is valid, he shall immediately allow the same, subject to the provisions of subsection (d) of this section, and process the same for payment. If the attorney-general is not satisfied that such claim is valid, he shall disallow said

claim, and notify the claimant in writing by service in person or by registered or certified mail, return receipt requested. The written notice of disallowance shall specify the reasons for such disallowance.

Any claimant whose claim is disallowed is entitled to submit additional proofs or, by request filed within forty-five [45] days after he receives notice of disallowance, request a hearing. A hearing shall be held within ninety [90] days after the attorney-general's receipt of a request for a hearing unless there is a postponement or continuance for good cause. The hearing held pursuant to this section shall be held by the attorney-general or his representative or deputy duly designated in writing, and all of the pertinent provisions of Ind. Acts of 1947, ch. 365 [§§ 63-3001—63-3030], as it has been or hereafter may be amended, not incompatible with the provisions of this act shall apply to and govern the hearing, the power and authority of the attorney-general or his duly designated representative or deputy in conducting the hearing and the administrative procedures in connection with and following such hearing, except that (1) where the property in question was located in a county within this state immediately before delivery or payment thereof to the attorney-general, the hearing shall be held in such county, and (2) an order of the duly designated representative or deputy of the attorney-general who conducts a hearing shall have the same force and effect as an order of the attorney-general.

(b) After such hearing and consideration of all the testimony, evidence and record in the case, the attorney-general or his duly designated representative or deputy shall make and enter an order deciding the claim in question. Such order shall be accompanied by findings of fact as specified in Ind. Acts of 1947, ch. 365 [§§ 63-3001—63-3030], as it has been or may hereafter be amended, and a copy of such order and accompanying findings shall be served upon all of the parties and their attorneys of record, if any, in person or by registered or certified mail. The attorney-general shall also cause a notice to be served with the copy of such order, which notice shall advise the parties of their right to judicial review, in accordance with the provisions of section twenty-seven [§ 51-728] of this act. The order of the attorney-general or his duly designated representative or deputy shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section twenty-seven [§ 51-728] of this act.

(c) The order and the accompanying findings of fact shall be public records. When a claim is allowed by the attorney-general, or his duly designated representative or deputy, whether with or without hearing, the same shall be paid forthwith by the treasurer without deduction for costs of notices of sale or for administrative charges, subject to the provisions of subsection (d) of this section.

(d) Any other provisions of this act to the contrary notwithstanding, where it shall appear that the person entitled to allowance of a claim, his heirs, legal representatives, successors or assigns, or the holders in due course of negotiable instruments, would not have the benefit or use or control of the money or of the property due him, or where special circumstances make it appear desirable that payment should be withheld, or where it appears that the person entitled to the money or property is a resident and national of a foreign country, and the federal statutes or federal regulations preclude the sending of moneys from the federal treasury to such persons, the attorney-general may deny such claim and hold the money or other property for the benefit of such owner, his heirs, legal representatives, successors or assigns, or such person who may thereafter appear entitled thereto; such money or other property so held shall be paid out only by further order of the attorney-general. [Acts 1967, ch. 263, § 26, p. 659.]

51-728. Judicial review.—(a) Any party or person adversely affected by a final order made and entered by the attorney-general or his duly designated representative or deputy after a hearing held in accordance with the provisions of section twenty-six [§ 51-727] of this act, is entitled to judicial review thereof. All of the pertinent provisions of Ind. Acts of 1947, ch. 365 [§§ 63-3001—63-3030], as it has been or may hereafter be amended, shall apply to and govern such review, except that all petitions for review shall be filed in the probate court of Marion County.

(b) The judgment of the probate court shall be final unless reversed, vacated or modified on appeal prosecuted by either party as provided in Ind. Acts of 1947, ch. 365 [§§ 63-3001—63-3030], as it has been or may hereafter be amended. [Acts 1967, ch. 253, § 27, p. 659.]

51-729. Election to take payment or delivery—Destruction of property which has no obvious commercial value.—(a) The attorney-general, after receiving reports of property deemed abandoned pursuant to this act [§§ 51-701—51-743], may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty [120] days after filing the report required under section fifteen [§ 51-715], the attorney-general shall be deemed to have elected to receive the custody of the property.

(b) Any property delivered to the attorney-general pursuant to this act which has no obvious commercial value shall be retained by the attorney-general until such time as he determines to destroy or otherwise dispose of the same. If the attorney-general determines that any property delivered to him pursuant to this act except property delivered pursuant to section eighteen [§ 51-718] or nineteen [§ 51-719] and not yet presumed to be abandoned has no obvious commercial value, he may at any time thereafter destroy or otherwise dispose of the same, and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the attorney-general pursuant to this act with respect to said property. [Acts 1967, ch. 253, § 28, p. 659.]

51-730. Examination of records.—Whenever the attorney-general believes that a person has failed to report property which should have been reported pursuant to the provisions of this act [§§ 51-701—51-743], he may issue a subpoena duces tecum or order to produce requiring such person to produce at a reasonable time at such person's residence or principal place of business in this state, such of his designated documents, papers, accounts, letters, photographs, books, or records as are reasonably necessary for the attorney-general to determine whether a report was required. Such subpoena duces tecum shall be served by any person authorized to serve civil process from any court in this state. Every such subpoena duces tecum shall be served at least five [5] days before the return date thereof. Upon motion made promptly, and in any event before the time specified in a subpoena duces tecum for compliance therewith, the court having probate jurisdiction in the county in which such person resides or has his principal place of business or is engaged in business in this state, or the judge thereof in vacation, may grant any relief with respect to such subpoena duces tecum which such court, under the Indiana rules of civil procedure for trial courts of record, could grant, and for any of the same reasons, with respect to an order to produce.

issued from such court. Obedience to a subpoena duces tecum served on any person pursuant to this act may be enforced by attachment in the court having probate jurisdiction in the county in which such person resides or has his principal place of business, or is engaged in business in this state, or the judge thereof in vacation, upon application by the attorney-general. [Acts 1967, ch. 253, § 29, p. 659.]

51-731. Proceeding to compel delivery of abandoned property.—If any person refuses to pay or deliver property to the attorney-general as required under this act [§§ 51-701—51-743], the attorney-general may bring an action in the court having probate jurisdiction in the county where the holder resides or has his principal place of business or is engaged in business to enforce such payment or delivery. [Acts 1967, ch. 253, § 30, p. 659.]

51-732. Appeals from courts.—Any person adversely affected by the final judgment of any court having probate jurisdiction under sections twenty-nine [§ 51-730] or thirty [§ 51-731] of this act may seek review thereof by appeal to the state Appellate Court of Indiana, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally. Transfer of a case from the Appellate Court of Indiana to the Supreme Court may be had as provided by law for other civil cases. [Acts 1967, ch. 253, § 31, p. 659.]

51-733. Offenses and penalties.—(a) The attorney-general shall see that all reports and notices required by this act [§§ 51-701—51-743] are properly made at the time and in the manner and form herein provided and shall take any necessary action to secure compliance with the provisions of this act. Any holder who shall fail, neglect or refuse to make and file any report, required by this act, shall be liable to the state in the penal sum of three hundred dollars [\$300] for each and every such failure, neglect or refusal, and an additional penal sum of ten dollars [\$10.00] for each and every day of the period of default, except when waived by the attorney-general. Such penalty may be recovered by the state in an action at law instituted by the state upon the relation of the attorney-general. The net proceeds of collection of any judgment recovered in such an action shall be paid into the common school fund of the state of Indiana. The recovery of such penalty shall not relieve the defendant holder from the duty of making and filing said reports. The state, at the instance or on the relation of the attorney-general, shall have the benefit of the remedy of an action for mandate to compel compliance with the requirements of this act relative to the making and filing of said reports.

(b) Any person who shall wilfully refuse to pay or deliver property presumed abandoned to the attorney-general as required under this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars [\$100] nor more than one thousand dollars [\$1,000], or by imprisonment for not more than thirty [30] days, or by both fine and imprisonment in the discretion of the court. [Acts 1967, ch. 253, § 32, p. 659.]

51-734. Purpose of act.—This act [§§ 51-701—51-743], in all its provisions, is intended to be a trustee and conservator measure for the initial purpose of marshalling, protecting and preserving the property rights and interests of the absent, incapacitated or missing owners of property, or those persons claiming by, through or under them, who by reason of chance, accident or circumstances beyond

their control, or other untoward event, have become in the eyes of the law incapable persons and whose rights and interests in such property it is the duty of government and law to protect, and further, in the interest of society and in conformity with public policy, the ultimate purpose of vesting the title and right of possession of such property in a fiduciary capable of administering, protecting, conserving and alienating it. To those ends the act shall be liberally construed. [Acts 1967, ch. 253, § 33, p. 659.]

51-735. Cooperation by other governmental bodies.—All officers, agencies, boards, bureaus, commissions, divisions, and departments of the state of Indiana, including any body politic and corporate created by the state of Indiana for public purposes, and every political subdivision of the state of Indiana, as defined in section three (j) [§ 51-703(j)] of this act, shall cooperate with the attorney-general upon his request to further the purposes of this act [§§ 51-701—51-743], and shall make their records available to the attorney-general for the purposes of discovering property which is presumed to be abandoned under this act, and shall, upon his request, compile reports from their records which would aid the attorney-general in identifying holders of property presumed to be abandoned under the terms of this act, and in discovering property so presumed to be abandoned. [Acts 1967, ch. 253, § 34, p. 659.]

51-736. Adjudication of abandonment.—Whenever it shall appear to the attorney-general from reports filed pursuant to this act [§§ 51-701—51-743] or when in any other manner it shall come to the knowledge of the attorney-general that it would be to the interest and advantage of the owner or owners of the property reported upon and of the state, so to do, the attorney-general may institute an action at law in the name of the state of Indiana upon his relation, for the purpose of determining the issue of actual abandonment of such property and to procure a decree for the descent and devolution thereof to the state of Indiana as abandoned property. Such suit may be commenced in the court having probate jurisdiction of the county in which a holder of the property resides or has its principal office or place of business or engages in business. The holders of such property and the owners thereof shall be made parties defendant, and any number of owners or holders may be joined as such parties defendant. Process in such suit shall be served upon all holders defendant in the same manner as is provided by law, or rules of court, for service of process in other suits at law, or as in this act provided. Process shall be served upon all owners joined as parties defendant by mailing by ordinary mail a summons issued out of said court, together with a copy of the complaint, to the last known address, if any, of each owner and by publication of notice to all owners in an English language newspaper of general circulation once each week for three [3] successive weeks, in the county of the owner's last known address or, for the owners whose last known address is outside the state of Indiana or for whom no address is known, in the county in which such court is located. [Acts 1967, ch. 253, § 35, p. 659.]

51-737. Nonresident service.—(a) A court may acquire personal jurisdiction over any nonresident holder of abandoned property, or his heirs, personal representative, successors or assigns, as to a cause of action arising from any of the acts enumerated in this section, in the manner provided in subsection (b) hereof, if, in person or through an agent, he:

- (1) engages in any business within this state; or

(2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

(3) owns, uses or possesses any real or personal property situated within the state.

(b) Actions against nonresidents arising from any of the acts enumerated in subsection (a) may be filed in the county where the cause of action arose or in Marion County, at the election of the attorney-general and, in addition to any other provision of law for service of process on nonresidents, service of process may be made by leaving a copy thereof, with the secretary of state, or in his office, and such service shall be sufficient service upon such person provided that notice of such service and a copy of the process are forthwith sent by the secretary of state by registered mail to the defendant, and the defendant's return receipt is appended to the sheriff's return of service of the original process and filed therewith in the court.

(c) The provisions of this section shall apply to any causes of action described in subsection (a) against any person who is a nonresident of the state at the time of service of process, in any such action, on him in the manner provided in subsection (b), regardless of his place of residence at any time before or after such service.

(d) This section is supplemental to all other acts and rules of court concerning service of process, venue, and jurisdiction and is to be liberally construed to effectuate its remedial purpose of providing an additional method of acquiring jurisdiction to adjudicate causes of action against nonresidents. [Acts 1967, ch. 253, § 36, p. 659.]

51-738. Decree for descent to state.—In legal proceedings instituted under the provisions of section 35 [§ 51-736] hereof, the court, upon due and satisfactory proof of the matters alleged in the plaintiff's complaint, and upon a finding of actual abandonment by the owner or owners of the property described in said complaint, and upon a further finding that no legal heir, or other person entitled thereto has appeared and made claim to such property or any part thereof, shall make and enter a decree providing for the descent of all remaining property to the state of Indiana as abandoned property, and decreeing that the same be assigned, transferred and delivered to the attorney-general to be held and disposed of by said attorney-general in the manner provided by this act [§§ 51-701—51-743]. Except as the court may otherwise direct, the appointment of a receiver, or other officer of the court, shall not be necessary for the purpose of effecting a manual delivery of said property, but the court may order and direct that such delivery be made by the holder, or other person in possession thereof. [Acts 1967, ch. 253, § 37, p. 659.]

51-739. Administration of estates of deceased, disappeared or missing persons.—The attorney-general may cause appropriate proceedings to be instituted for the administration of the estate of any person (1) who is the owner of abandoned property, either real or personal, of which the attorney-general has knowledge; (2) who died owning property, either real or personal, and there is reason to believe that such owner left no known heirs; or (3) who is the owner of property presumed to be abandoned under this act [§§ 51-701—51-743] which is in the possession of or under the control of a holder and for which such holder is accountable to such owner. Such proceedings shall be commenced in the court having probate jurisdiction in the county of the owner's last known address, or in the county in which the abandoned or presumably abandoned property is discovered, or in the county in which the holder of the property resides or has his principal

place of business or engages in business in this state. For the purposes of such proceeding, and of this act, it shall be presumed that the owner was a legal resident of the state of Indiana.

Such proceeding shall be commenced upon petition of the attorney-general praying for the appointment of himself or a person designated by him as administrator of such estate. Notice of such petition shall be published as required for publication of the issuance of letters testamentary or of administration by the Indiana Probate Code. Letters of administration shall be issued to the attorney-general or the person designated by him forthwith upon his qualifying.

If at any time after proceedings are commenced, any person shall file a petition with the court showing himself to be the owner of the abandoned property, the court, upon finding that such property rightfully belongs to such petitioner, shall direct the termination of the administration pursuant to this act and shall order the transfer of all property held thereunder to the owner.

On application within thirty [30] days after the last publication of notice required by this section made by a surviving spouse or next of kin of the owner, or by a person nominated by one of them, or by an executor named in a will of the owner, showing the owner to be deceased, the court shall require the administrator to show cause why the administration should not be revoked and such petitioner appointed successor administrator. If an appointment is revoked, the revocation shall be without prejudice to the rights and interests of any person who relied upon it in good faith.

After the appointment of such administrator and upon issuance of letters of administration to him he shall have the right and it shall be his duty to marshal and collect the assets of the estate, and to demand and receive from any holder property in the holder's possession or under his control for which he is accountable to the owner, and the administrator shall have all the rights of action to reduce such property to his personal possession and control as any other administrator would have if administering upon the estate of a deceased person. If there are no known heirs, legatees, devisees, successors or assigns of such deceased, disappeared or missing owner, upon the allowance of the administrator's final report and accounting by the court such administrator shall be ordered by said court to transfer and deliver all escheated property remaining in such estate to the common school fund, and all abandoned property and property presumed abandoned to the attorney-general for disposition as abandoned property pursuant to the terms of this act.

Except as in this act otherwise provided, the procedure in such proceedings and rights and duties of the administrator shall be in conformity with the provisions of the Indiana Probate Code concerning the administration of the estates of deceased persons. [Acts 1967, ch. 258, § 38, p. 659.]

51-740. Reports.—From and after the effective date [March 10, 1967] of this act [§§ 51-701—51-743], any executor or administrator of an estate in the state of Indiana in which there is property as to which the decedent or alleged decedent died or allegedly died intestate and for which no heirs can be found or no heirs are known at the time of the filing of the petition for letters testamentary or of administration or on the effective date of this act, whichever is later, shall notify the attorney-general in writing by certified or registered mail, return receipt requested, of the filing of the petition and of the fact that no heirs of decedent can be found or are known at that time. The attorney-general may appear in any such cause to protect the interests of the state of Indiana and the interest of the owner of the property.

No claims of creditors and no expenses of administration shall be allowed in any such estate opened after the effective date of this act until the attorney-general has been properly notified pursuant to this section. [Acts 1967, ch. 253, § 39, p. 659.]

51-741. Proof required.—It shall be sufficient proof for the purposes of abandonment under the provisions of this act [§§ 51-701—51-743] when it shall appear from a report required by this act or from reliable sources or from the books and records of any holder that the property is presumed to be abandoned pursuant to the terms of this act. [Acts 1967, ch. 253, § 40, p. 659.]

51-742. Ferrets—Limitation on fees.—In order to carry out the purpose of this act [§§ 51-701—51-743] expressed in sec. 33 [§ 51-734] hereof to protect and preserve the property rights and interests of the absent, incapacitated or missing owners of property and those persons claiming through them, as is the duty of government, the fees of any person or company for discovering escheated or abandoned funds in the custody of the abandoned property fund or the common school fund for and on behalf of a claimant shall be limited to not more than ten per cent [10%] of the amount collected, unless the amount collected is one thousand dollars [\$1,000] or less. This section shall not apply to the fees of an attorney-at-law duly admitted to practice in a state of the United States who is employed by a claimant on a contractual basis. [Acts 1967, ch. 253, § 41, p. 659.]

51-743. Rules and regulations.—To carry out the provisions of this act [§§ 51-701—51-743] the attorney-general may make necessary rules and regulations in accordance with the provisions of Ind. Acts of 1945, ch. 120 [§§ 60-1501—60-1611], including, but without limitation, rules and regulations authorizing refunds of costs incurred by holders and prescribing forms for use under this act. [Acts 1967, ch. 253, § 42, p. 659.]

Compiler's Note. Section 45 of Acts 1967, ch. 253, provided: "Retroactivity. This act, in all of its provisions, is intended to be retroactive, and it shall be construed as applying retrospectively to all persons and property coming within its purview."

Act Supplemental. Section 43 of Acts 1967, ch. 253 reads: "This act is supplemental to and not amendatory of all other acts pertaining to the disposition of unclaimed property."

Separability. Section 44 of Acts 1967, ch. 253, reads: "If any provision of this

act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Emergency. Section 46 of Acts 1967, ch. 253, declared an emergency, but provided that no report should be required to be filed prior to November 1, 1967. Approved March 10, 1967.