

1/29/68

Second Supplement to Memorandum 68-14

Subject: Study 26 - Escheat

Attached as Exhibit I is a letter from the Office of the Attorney General concerning the recommended legislation relating to unclaimed property. The Attorney General has two suggestions.

Section 1516

The Attorney General suggests in substance that a new subdivision be added to Section 1516 to read:

(d) Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, escheats to this state if:

(1) The interest in the association is owned by a person who for more than 15 years has not corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association;

(2) The association has not during such 15-year period declared any dividend nor incurred any obligation to pay any other sum described in subdivision (a) to the owner of such interest; and

(3) The association does not know the location of the owner at the end of such 15-year period.

Section 1518

The Attorney General suggests in substance that Section 1518 be revised to read:

1518. (a) Tangible personal property located in this state and, subject to Section 1510, intangible personal property, and the income or increment on such tangible or intangible property, held in a fiduciary capacity for the benefit of another person escheats to this state if the owner has not, within seven 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 or other record on file with the fiduciary.

(b) For the purpose of this section, when a person holds property as an agent for a business association, he is deemed to hold such property in a fiduciary capacity for the business association alone, unless the agreement between him and the business association clearly provides the contrary. For the purposes of this chapter, if a person holds property in a fiduciary capacity for a business association alone, he is the holder of the property only insofar as the interest of the business association is concerned and the association is deemed to be the holder of the property insofar as the interest of any other person in the property is concerned.

In connection with this suggestion, see Section 1520.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

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January 24, 1968

California Law Revision Commission
School of Law
Stanford, California

Attention: Mr. John H. DeMouly,
Executive Secretary.

Gentlemen:

We have two further thoughts on the proposed escheat bill, these are:

1. The addition to subdivision (b) of section 1516 of the following sentence:

"In the event the association has not declared any dividend nor incurred any obligation to pay any other sum escheated under subdivision (a) for a period of 15 years, this subdivision (b) shall apply if the owner of such intangible interest has not corresponded in writing with the business association concerning such interest for a period of 15 years."

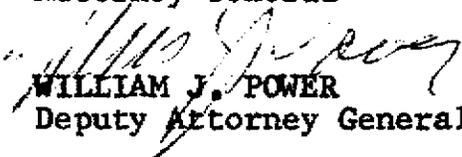
The desirability of such a provision has been lately brought to our attention by a proposed reorganization of a corporation which, though never having declared a dividend, has a substantial surplus and in the course of reorganization proposes to issue two classes of stock. The first class of stock will go to shareholders whose whereabouts are known and will receive cash dividends, the other class to shareholders whose addresses are unknown. The latter stock will not be paid cash dividends but will receive credits in an unfunded reserve account. As this class will not be paid cash dividends the stock will never be subject to escheat under existing law.

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Our second proposal is that the words "tangible or" be inserted immediately preceding the word "intangible" in both subdivisions (a) and (b) of section 1518.

Very truly yours

THOMAS C. LYNCH
Attorney General


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Deputy Attorney General

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