

2/2/68

Third Supplement to Memorandum 68-14

Subject: Study 26 - Escheat

Attached as Exhibit I is a letter we received containing the comments of the Bank of America on the Escheat recommendation. The following revisions are suggested.

Section 1300

The Bank of America suggests that subdivision (g) be revised to read:

(g) "Domicile," in the case of a corporation, refers to the place where the corporation is incorporated, or in the case of a national banking association, the place where such association has its principal place of business .

Subdivision (g) does not purport to declare the domicile of all holders of unclaimed property. For example, the subdivision provides no assistance in determining the "domicile" of an unincorporated association. It might be better to delete the subdivision than to add the suggested language which provides a rule that might not be appropriate in a particular case. For example, the added language might better refer to the "state where its business is primarily transacted."

Section 1510

The Bank of America suggests that subdivision (e) be deleted. There is considerable merit to the bank's suggestion. See discussion on pages 1-3 of the attached exhibit. The deletion would not affect the escheat of travelers checks and money orders sold in California unless the address of the purchaser as shown on the records of the bank was in a foreign nation.

In addition to deleting subdivision (e), consideration should be given to restoring a portion of the language that is now contained in existing Section 1502 of the Code of Civil Procedure. The language reads:

Nothing in this section shall be construed to relate to any instrument held or payable only outside the limits of the United States or payable only in currency other than United States currency, nor to any funds held only in or payable only in a foreign country.

We suggest that consideration be given to adding a new subdivision to subdivision (a) of proposed new Section 1502, to read:

1502. (a) This chapter does not apply to:

* * * * *

(3) Any instrument held or payable only outside the limits of the United States or payable only in currency other than United States currency, nor to any funds held only in or payable only in a foreign country.

Consideration should be given to deleting "or payable only in currency other than United States currency" for the subdivision set out above since that exclusion does not appear necessary to avoid the problems identified by Bank of America in Exhibit I. There seems to be no reason why an instrument payable in a foreign currency should not escheat if the last known address of the owner of the instrument (1) is in California or (2) is unknown and the holder is domiciled in California.

Section 1532

The bank would prefer that sums payable on escheated travelers checks or money orders--subdivision (c)--be paid to the State Controller at the same time as other sums escheated to the state. The State Controller has suggested that subdivision (c) be revised to make sums payable on escheated travelers checks and money orders payable at the time the report

is filed with the State Controller. Subdivision (c), as contained in the Commission's recommendation, incorporates the 20-day period provided in the Uniform Act.

Section 1570

The recommended legislation was revised to take care of the problem suggested in the Bank of America comment to Section 1570 before the recommendation was approved for printing. Hence, no action is needed on this comment.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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January 30, 1968

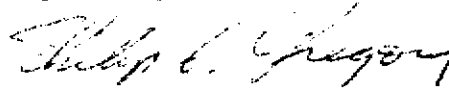
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

Enclosed please find a comment on the earlier version of the escheat proposal. I apologize for the fact that this was put aside and not forwarded on a more timely basis.

At your convenience, I would be happy to have your response on problems you believe are still outstanding.

Very truly yours,



For LANDELS, RIPLEY, GREGORY & DIAMOND

PJG:rm

Enclosure

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Bank of America
NATIONAL TRUSTERS ASSOCIATION

SAN FRANCISCO HEADQUARTERS

LEGAL DEPARTMENT

SAN FRANCISCO, CALIFORNIA 94120

June 27, 1967.

Philip J. Gregory, Esq.
El Mirador Hotel
Sacramento, California

Re: Tentative Recommendation Relating to
Escheat: California Law Revision
Commission (Revision of April 5, 1967).

Dear Mr. Gregory:

We have the following comments concerning the Tentative Recommendation Relating to Escheat of the California Law Revision Commission (April 5, 1967 Revision):

1. Proposed Section 1300(g) would provide that:

"'Domicile' in the case of a corporation, refers to the place where the corporation is incorporated."

National banks operate under Federal charters, and cannot be said to be incorporated in any "place." With some historical exceptions, the activities of national banks are generally limited to one state. It is therefore suggested that the following phrase be added to proposed Section 1300(g):

" * * * , or in the case of a national banking association, the place where such association has its principal place of business."

2. Under proposed Section 1510(e), intangible personal property would escheat to California, under certain conditions, if "the last known address, as shown on the records of the holder, of the apparent owner, is in a foreign nation, and the holder is (1) domiciled in this state, or (2) a government or governmental subdivision or agency of this state." As applicable to the overseas operations of the Bank of America, we feel that this proposed legislation is far too broad, and unjustified. One of the basic reasons for the revision of California's unclaimed property laws,

as stated by the Commission, is to bring California law in line with the restrictions imposed by, and the advantages to be gained from, the rules set forth in Texas v. New Jersey, 379 U.S. 674 (1965). This case dealt, however, only with conflicting claims of the several states of the United States. It did not deal with conflicting claims of a state and a foreign nation, or other possible foreign claimant. Even if the United States Supreme Court were to set forth rules within this area of conflict, such rules would not necessarily be followed outside of the United States. Bank of America operates overseas largely by way of foreign branches. This is to say, no separate legal entity is involved. Therefore, under the proposed legislation, California's unclaimed property laws would cover, for example, a deposit in local currency made by a citizen and resident of Thailand in the Bangkok Branch of the Bank of America. It would also cover instruments issued by the Bank of America in foreign countries on which the bank is directly liable, such as drafts, cashier's checks and money orders. California law would be applicable whether the bank obligation was in United States dollars or in a foreign currency. We are opposed to this proposed extension of California's unclaimed property laws because it could in many cases expose the bank to double liability. In addition, the relationship of the State of California to the types of transactions described above is so remote that it would be inequitable for California to assert escheat rights concerning them. Finally, the proposed extension could well lead to detrimental political and economic consequences with respect to the relationships between the United States and its citizens with foreign countries and their citizens.

In addition to the above, it would appear that the proposed extension concerning foreign obligations could prove very burdensome to the State of California. Under proposed Section 1561, if any holder delivers escheated property to the State Controller in accordance with California law, and at any time thereafter any person claims the property from the holder, the State Controller must, upon written notice of such claim, undertake to defend the holder against such claim and must indemnify and save the holder harmless against any liability upon such claim. Many holders of foreign obligations, including the Bank of America, are subject to legal process in a large number of countries throughout the world. With respect to the types of transactions discussed above, the State would be in a position of having to defend former holders of foreign obligations with respect to claims made against them in foreign countries. The expense to the State in fulfillin

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its obligations under this provision might well exceed any benefit derived from any extension of California law to cover foreign obligations.

3. Under proposed Section 1532(c), sums payable on travelers checks or money orders must be paid to the State within twenty (20) days after the final date for filing the report. With respect to other types of obligations, a six-month period is provided in proposed Section 1532(a). By making the payment procedures more complex than they already are, the cost of compliance with the Act to holders of unclaimed property will increase. In addition, the 20-day period would appear to be too short. For these reasons, we do not favor the proposed special payment procedures with respect to travelers checks and money orders.

4. Proposed Section 1570(b) provides that the payment or delivery of escheated property to the Controller does not revive or reinstate any right to claim such property that is barred at the time of such payment or delivery either because of failure to present such claim to the holder or because of failure to commence an action thereon within the period prescribed by an applicable statute of limitations. Under present law, owners of abandoned property which has been paid to the State may claim it from the State, even if the statute of limitations has run with respect to the claim by the owner against the former holder. The legislative history of the California version of the Uniform Disposition of Unclaimed Property Act shows that it was adopted for three purposes:

- (1) Revenue to the State;
- (2) Convenience to holders of abandoned property;
and
- (3) Location of more missing owners.

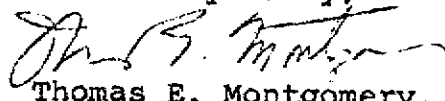
Report of the Escheat Subcommittee of the Committee on Judiciary Pertaining to Abandoned Property - State Acquisition and Recovery by Rightful Owner, Assembly Interim Committee Reports, 1957-59, Vol. 20, No. 4, page 10. In this report it was also stated that:

"No greater protection could be given to the owner of abandoned property than is proposed in this legislation. He is given more effective notice, both by holders and by the State, and may claim his property, or its equivalent in money, at any time." Op. Cit., p. 15.

June 27, 1967.

We think that the protection given to missing owners under present law is desirable and should not now be discarded. In addition, we are opposed to the proposed change for the following reason: It is the practice of the Bank of America, and other banks, to honor certain types of claims even though the statute of limitations may have run on them. For example, it appears that the statute of limitations on an instrument under which a bank is directly liable, such as a cashier's check, is four years (although this question is presently an issue in litigation between this bank and the State Controller). Nevertheless, this bank frequently declines to take advantage of the running of the statute of limitations concerning cashier's checks presented after four years, in cases where it feels that it is in its best interest to do so. The bank's practices are substantially the same with respect to unclaimed dividends and unclaimed wages. Other holders of unclaimed property undoubtedly follow similar practices. The Commission's comments to Section 1570 are to the effect that Section 1570(b) does not affect the holder's right to reimbursement under subdivision (b) of Section 1560. Since these two sections could now be interpreted to be in conflict, we would suggest that in any event one of the two sections contain a specific reference to the other. Even with such a clarification, we think the proposal undesirable because it would require the former holder to pay the claimant directly, and then claim reimbursement from the State rather than following the usual current practice, which is to refer the claimant to the State. The proposed method would thus involve more administrative costs for former holders, which we feel to be unjustified, particularly in view of the fact that such holders will have previously incurred administrative costs in complying with the basic reporting and paying requirements of present California law.

Yours very truly,



Thomas E. Montgomery,
Assistant Counsel.

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