

#26

3/10/68

Memorandum 68-34

Subject: Study 26 - Escheat (Senate Bill No. 62--Unclaimed Property Compact)

Senate Bill No. 62 was introduced to effectuate the Commission's recommendation that the Unclaimed Property Compact be enacted in California. This Compact was prepared by the National Conference of Attorneys General in 1965. The Compact was drafted by the Escheat Committee of the National Association of Attorneys General under the Chairmanship of Thomas C. Lynch, California Attorney General.

After Senate Bill No. 62 was introduced, several representatives of companies issuing travelers checks or money orders nationally indicated their concern that the Compact was poorly drafted and would create more problems than it would resolve and, more important, that enactment of the Compact might defeat California's attempt to escheat travelers checks and money orders issued in California by national companies. In view of this concern, I requested that the Senate Committee on Judiciary hold the bill for a later hearing after the Commission had reconsidered the bill.

The Commission itself has previously on several occasions taken the view that the compact is poorly drafted.

It appears that adoption of the Compact would nullify the presumption contained in Senate Bill No. 63 (Section 1511) for the escheat of travelers checks and money orders where the company does not maintain a record of the purchaser's name and address and is incorporated in a state other than California. Under the Compact, the funds payable on travelers checks and money orders will escheat to the state of incorporation regardless of the California presumption. Thus, if New York joins

in the Compact, California would not obtain the funds payable, for example, by American Express Company on travelers checks sold in California.

It further appears that the Compact would defeat California's effort to escheat unclaimed funds of life insurance companies under the presumption provided in Senate Bill No. 63--subdivision (b) of Section 1515.

The staff recommends that the Commission withdraw its recommendation that the Compact be enacted in California and that the California Attorney General and the National Association of Attorneys General be advised that the Compact should be revised to deal with the problem of travelers checks and money orders and life insurance funds.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

SB 62 (Song)
As Introduced
CCP

Hearing Date: 3-1-68

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The Unclaimed Property Compact

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NOTE: (1) SB 62 should be considered in conjunction with its companion bill, SB 63, also set for hearing this date.

(2) SB 62, if approved by this Committee, must be re-referred to Finance since it involves state expense.

HISTORY

Source: California Law Revision Commission.

No prior similar legislation.

PURPOSE: In 1965, the U. S. Supreme Court held in Texas v. New Jersey that only one state may escheat intangible personal property, even though the debtor or obligor of the property may be subject to the jurisdiction of several states. The rules laid down by the court were as follows: The state of the last known address of the owner (as shown by the records of the debtor or obligor) may escheat; in the absence of a known address, the property may be escheated by the state of domicile of the debtor or obligor. In such latter event, however, another state may prove that the last known address of the owner was in fact within its borders and may then escheat the property, recovering it from the debtor or obligor or from the state of first escheat. In the former case, if the laws of the jurisdiction do not provide for escheat, the state where the debtor or obligor is domiciled may escheat, subject to a claim of the former state if its law later provides for escheat of intangible personal property. This case, and these rules, made California's present law (a revision of the Uniform Disposition of Unclaimed Property Act) obsolete, since that law is based upon jurisdiction over the debtor or obligor rather than upon the last known address of the owner of the property.

Following the above decision, the National

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Association of Attorneys General proposed an Unclaimed Property Compact to resolve multi-state claims and settle the status of property which was unclaimed before February 1, 1965 (the date of the decision), and to solve procedural problems created by the decision. The purpose of the Act is to assist the party states in securing unclaimed property to which they are individually entitled. The California Law Revision Commission recommends that California become a party to this compact, and SB 62 is the legislation whereby this would be effected.

ANALYSIS: Basically, the Act provides as follows: (1) With respect to unclaimed real or tangible personal property, the state in which the property is located is the only state entitled to receive and dispose of it; (2) Unclaimed property not coming within the above provision (e.g., intangible personal property, etc.) shall be received and disposed of by the state to which the holder of the property ("holder" includes debtor or obligor of intangible property) is subject if such holder is subject to the jurisdiction of only one state; (3) In all other cases, the state of last known address of the owner may receive and dispose of it under its laws, which address shall be presumed to be that shown by the records of the holder. If this information is not known (or if such state does not take the property) the state of incorporation, organization or domicile of the holder may receive and dispose of the property. If incorporation or organization is in more than one state, these several states shall be entitled to the property in equal shares, also sharing proportionately the costs of taking; (4) Finally, if the property still does not come within one of the above provisions, the state of the location of that office of the holder which made the largest total disbursement in the immediate preceding fiscal year may take and dispose of the property.

A statute of limitations is set up within which time claims of other states must be made to recover such property from another party

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state to the compact. Such limitation is one year from the initial taking of the property or one year from the earliest time at which another party state, under its laws, would be entitled to take the property, whichever is later.

Cooperation among party states is pledged and it is expressly provided that these laws shall be applicable only as between party states to this compact and that, with respect to any non-party state, conflicts shall be decided as if this compact had never been enacted. A state may withdraw from the compact by repeal of the statutes, but such withdrawal shall not be effective until two years after the Governor has given written notice of the withdrawal to the Governor of each other party state. Property escheated or received by a party state prior to the date of the Texas v. New Jersey decision is not affected by this compact, and state laws (both in existence and prospective) which are not in conflict with this compact and which relate to escheat, custodial, or other principle dealing with unclaimed property, are not to be affected by enactment of this compact.

However, any claim that a party state may have to property escheated or received into the custody of another state to the compact prior to Texas v. New Jersey is waived by joining the compact.