

1/18/74

First Supplement to Memorandum 74-2

Subject: 1974 Legislative Program

The Legislative Counsel's Office has raised two problems concerning the recommendation relating to disposition of personal property remaining on premises at termination of tenancy. (See attached letter.)

I. Separation of Powers

Subdivision (c) of Section 1988 of the recommendation provides that any balance of the proceeds from the sale of abandoned personal property is to be turned over to the county after which the former tenant or any other owner has one year within which to claim the balance. The last two sentences of subdivision (c) read as follows:

The treasurer or other person designated by the county shall decide conflicting claims as to the ownership of the balance or any portion thereof. The county is not liable to other claimants upon payment of the balance.

The Legislative Counsel thinks that this delegation of authority raises the issue of separation of powers under Article III, Section 3, of the state Constitution. Furthermore, this delegation of duty to the treasurer or other person is viewed as a state mandated program necessitating costs to a local governmental agency and so requires an appropriation and a two-thirds vote in committee.

The purpose of these two sentences is to protect the county from liability in the event of conflicting claims to the balance. To achieve this goal, it is not necessary to provide that the treasurer shall decide conflicting claims. Accordingly, the staff suggests that the following be substituted for the two sentences in question:

If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid.

The last sentence of the Comment should be reworded as follows:

The last ~~two-sentences~~ sentence of subdivision (c) are is intended to protect the county in the event there are conflicting claims to the balance.

II. Due Process

The Legislative Counsel's Office thinks that a due process issue can be raised regarding the landlord's option to keep or dispose of property worth less than \$100. The authority cited for this argument is the Fifth Amendment to the United States Constitution and Article I, Section 13 of the state Constitution; no cases are cited. The letter also erroneously refers to Section 1982 as a source of the landlord's option to keep. However, Section 1982 merely provides that, if property is lost, it is to be disposed of pursuant to the lost property laws.

The letter suggests that, since no statement of the landlord's reasonable belief is included in the notice, a tenant or other owner will be misled into believing that he can simply wait until after the sale and then collect the balance of the proceeds from the county. The staff thinks that it is highly unlikely that a tenant or other owner would rationally believe such a course would be to his advantage since the costs of storage, advertising, and sale are deducted from the proceeds, and he would have to go through the red tape involved in making a claim for the balance. But, even assuming such a foolish tenant or other owner, the staff does not find the notice provided by Sections 1984 and 1985 to be misleading. The notice forms provided by these sections state that, unless the property is claimed by a certain date, it may be "disposed of pursuant to Civil Code Section 1988." The person receiving the

notice will have to look at the section cited before he will know that the balance of proceeds of sale are turned over to the county; when he does so, he will find in subdivision (a) the following provision:

However, if the landlord reasonably believes that the total resale value of the property not released is less than one hundred dollars (\$100), he may retain such property for his own use or dispose of it in any manner he chooses.

The staff thinks that this notice satisfies the requirements of due process. The tenant or someone else has abandoned property on the premises. Notice is given to the tenant and to any other person reasonably believed to be the owner. A sufficient time is afforded for the person to reclaim the property. Unclaimed property is required to be sold where its value is great enough to make a public sale a reasonable alternative. The \$100 figure is an admittedly arbitrary judgment of the level below which it becomes increasingly inefficient and unreasonable to require a public sale. The staff anticipates that, in most cases where property is sold at public sale, the proceeds will be offset by the costs of storage, advertising, and sale, and we know from Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971), that the due process clause allows the landlord to recoup these costs.

Respectfully submitted,

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Legal Counsel

BERNARD GIBBLA
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First Supplement to
Memorandum 74-2

EXHIBIT I

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Sacramento, California

January 8, 1974

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

Abandoned Property - #22322

Dear Mr. DeMouilly:

Pursuant to your letter of December 26, 1973, we have reviewed the bills prepared under our Request Nos. 21863A and 21863B and have made certain suggested changes in that proposed legislation.

While we have not had the opportunity to consider the matter fully, there are several provisions in the proposed bill prepared under Request No. 22322B which came to our attention during this review and warrant your attention.

First, we think a constitutional issue regarding due process of law can be raised as to the forfeiture of personal property of less than \$100 total resale value to the lessor (see Fifth Amdt., U.S. Const.; and see Sec. 13, Art. I, Cal. Const.). Under the bill, property of the tenant which the lessor reasonably believes to be under \$100 total resale value may be retained by the lessor

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for his own use or disposal as he chooses (see Sec. 1982). On the other hand, if the lessor reasonably believes that such value is \$100 or more it must be sold at public sale, with the excess proceeds deposited with the county treasurer to be held for the benefit of the tenant for one year (Sec. 1988).

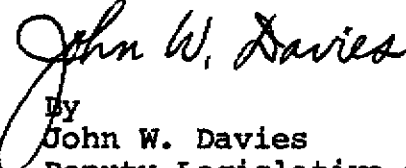
Thus, while notice must be given specifying the personal property in issue, no statement of the lessor is required respecting his reasonable belief of value (Secs. 1984 and 1985). A lessee-property owner who opts not to respond and simply claims any proceeds forwarded to the county following public sale and payment of costs is without notice that this property may not be sold but rather disposed of or appropriated to the lessor's personal use (subd. (a), Sec. 1988).

Second, we note that the county treasurer or other official designated by the county is authorized to decide conflicting claims as to the ownership of any amounts forwarded to the county following public sale (subd. (c), Sec. 1988). Such a delegation of authority raises the issue of the separation of powers of the branches of government, and specifically whether this constitutes an improper delegation of judicial authority (see Sec. 3, Art. III, Cal. Const.).

Finally, because the county is delegated this duty to resolve conflicting claims, the bill mandates a program necessitating costs to a local governmental agency (see Sec. 2231, R. & T.C.). Accordingly, we have characterized the bill as such, adding a section to the bill making a blank appropriation for these costs and modifying the digest appropriately.

Very truly yours,

George H. Murphy
Legislative Counsel


By
John W. Davies
Deputy Legislative Counsel