

Memorandum 89-98

Subject: Study L-1040 - Disposition of Small Estate by Public
Administrator (Approve to Print)

Attached to this memorandum is a draft of the recommendation relating to disposition of small estates by the public administrator. This recommendation incorporates the general Government Code procedure for dealing with property deposited with the county treasurer, and adds a publicity requirement by the State Controller for estates exceeding \$10,000.

The recommendation was circulated for comment in September and October as part of the tentative recommendation relating to miscellaneous probate revisions. In addition to persons to whom all our tentative probate recommendations are circulated, we sent copies (with cover letters specifically requesting comments), to the State Controller and to professional associations of county treasurers, public administrators, and county supervisors.

Other than comments we received generally approving the entire tentative recommendation package, we got only two letters addressed to this particular recommendation. Joseph A. Coffrini, Treasurer/Tax Collector/Public Administrator of Marin County (Exhibit 1) agrees with this recommendation.

Howard Serbin of Santa Ana (letter attached to Memorandum 89-**) disagrees:

I have problems with the proposal. Current law is clear that in a 7663 case, where there are no beneficiaries, the balance shall be deposited with the County Treasurer. The only uncertainty is whether assets should go to the State or to the County Treasury in summary cases with no beneficiaries which were opened under former Section 1143(a) but closed after the effective date of 7663. While my interpretation is that the old law applies and the assets escheat to the State, this could use clarification.

The proposed amendment represents a change, not just a clarification of the law. It proposes to treat cases where there are no beneficiaries more or less like those where there are known but unlocatable beneficiaries or creditors. If this is the case, to make matters completely clear, perhaps the section should also spell out specifically how to treat distributions to unlocatable beneficiaries or creditors.

In response to Mr. Serbin's points:

(1) Despite the plain language of Section 7663, the section must be read with Government Code Section 50050, which states that "money not the property of a local agency which remains unclaimed in its treasury" may not become the property of the local agency until after three years have elapsed "except as otherwise provided by law." It is not clear that Section 7663(b) is an exception to Section 50050, and we have correspondence with the County of Alameda on this very problem. Moreover, even if it is an exception, it should not be and was never intended by the Commission to be an exception, and for this reason alone the staff believes the proposed amendment is appropriate.

(2) The application of new law to pending proceedings is governed by Probate Code Section 3, which applies new law immediately absent an express exception. If we repeated this rule in every section in which there was a change in law, the volume of the code would be hugely expanded.

(3) The staff agrees there is potential confusion between funds that are deposited with the county treasurer as a result of there being no known heirs and funds that are deposited with the county treasurer as a result of the inability to locate known heirs. This is because the county treasurer determines claims for funds summarily deposited by the personal representative, whereas the court that ordered distribution determines claims by named but unlocated distributees. We could augment the Comment with a statement that, "It should be noted that, while claims for funds deposited under subdivision (b) are processed under the general Government Code provisions, claims for funds deposited with the county treasurer under Section 11850 are processed by the court under Section 11854. Deposit with the county treasurer under subdivision (b) is an exception to the deposit procedure generally applicable in estate administration. See Sections 11900 (distribution to state) and 7622 (general administration rules apply except as otherwise provided in this chapter)."

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

TREASURER — TAX COLLECTOR — PUBLIC ADMINISTRATOR

COUNTY OF MARIN

P. O. BOX 4220 — CIVIC CENTER

SAN RAFAEL, CALIFORNIA 94913

JOSEPH A. COFFRINI
TREASURER — TAX COLLECTOR
PUBLIC ADMINISTRATOR

MICHAEL J. SMITH
ASSISTANT TREASURER — TAX COLLECTOR

October 25, 1989

LA LAW REV. COMM'TI

OCT 27 1989

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Attention: John DeMouly
Commission Executive Secretary

RE: Probate Code Recodifications

Dear Mr. DeMouly:

This office supports the proposed revisions to Probate Code Sections 7663 and 8404 as contained in the Commission's Tentative Recommendation relating to Miscellaneous Probate Code Revisions dated 9/12/89.

Section 7663 - We agree that notice for deposits of estates with no beneficiary should be provided in accordance with the Government Code Provisions and that notice should also be transmitted to the State Controller's Office for deposits in excess of \$10,000.

Section 8404 - We also support your recommendation to eliminate the requirement for the Public Administrator to file a statement of duties and liabilities. Like trust companies, we should be exempt from this provision as it creates unnecessary paper work.

We appreciate the opportunity to provide our comments and again support the Revisions as outlined by your Commission for the above Probate Code Sections.

Yours truly,



JOSEPH A. COFFRINI
TREASURER-TAX COLLECTOR-PUBLIC ADMINISTRATOR

JAC:bw

cc: Barbara Cain, Deputy Public Administrator

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Disposition of Small Estate
by Public Administrator**

December 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Disposition of Small Estate by Public Administrator*, 20 Cal. L. Revision Comm'n Reports 539 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-4739
(415) 494-1335

EDWIN K. MARZEC
CHAIRPERSON
ROGER ARNEBERGH
VICE CHAIRPERSON
BION M. GREGORY
ASSEMBLYMAN ELIJAH M. HARRIS
SENATOR BILL LOCKYER
ARTHUR K. MARSHALL
FORREST A. PLANT
ANN E. STODDEN
VAUGHN R. WALKER

December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

The legislation recommended by the Commission would make clear that the general procedure for disposition of unclaimed funds in the county treasury (Government Code Sections 50050-50056) applies to funds deposited by the public administrator under Probate Code Section 7663.

In addition, where an amount deposited under Section 7663 exceeds \$10,000, the recommended legislation would require the public administrator to transmit relevant information concerning the deposit to the State Controller for compilation and reporting by the State Controller with the information concerning unclaimed estates held by the state.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Edwin K. Marzec
Chairperson

542 DISPOSITION OF SMALL ESTATE BY PUBLIC ADMINISTRATOR

RECOMMENDATION

Probate Code Sections 7660-7666 provide a summary procedure for disposition of small estates (under \$60,000) by the public administrator. Under this procedure, the public administrator may summarily liquidate assets, pay debts and expenses, and make distribution to beneficiaries, outside the normal probate notice and hearing procedures. Beneficiaries are thereafter liable to unpaid creditors, and the public administrator must file a statement of disposition with the county clerk and retain records of disposition for three years.

If the decedent has no beneficiaries, Probate Code Section 7663 requires that the public administrator deposit the balance remaining after payment of debts and expenses with the county treasurer for use in the general fund. Although there is a general procedure in the Government Code for beneficiaries to make a claim on funds deposited with the county treasurer, it is not clear that the Government Code procedure applies to funds deposited under Probate Code Section 7663.

The general Government Code procedure is found in Sections 50050-50056.¹ The general procedure is applicable to unclaimed funds deposited with the county treasurer from any source, including probate. Any doubt that this procedure

1. These provisions specify that unclaimed funds in the county treasury are subject to claim and escheat as follows:

- (1) The treasurer must hold the funds for at least three years.
- (2) During the three-year holding period the funds may be released to an heir, beneficiary, or duly appointed representative upon submitting proof satisfactory to the treasurer. If the treasurer rejects the claim, the claimant may commence an action to recover the funds.
- (3) If the funds have not been claimed after three years, the property may be escheated to the county under a procedure that involves publication of notice in a newspaper of general circulation in the county stating the amount of money, the fund in which it is held, and the proposed date of escheat (45 to 60 days thereafter).
- (4) In response to the published notice, any person who claims the funds may file a claim with the county treasurer. If the treasurer rejects the claim, the claimant may file a complaint and serve summons within 30 days and no funds may be escheated until the action is resolved.
- (5) The publication procedure only applies to amounts of \$10 or greater. Amounts of less than \$10 may be escheated after three years without notice.

applies as well to funds deposited with the county treasurer under Probate Code Section 7663 should be eliminated by an express reference to the Government Code procedure. This will clarify existing law and eliminate future litigation over the issue.

In addition, because deposits under Section 7663 are not publicized at the time of the deposit, the existing claim procedure outlined above should be augmented by public notice, at least where the amount deposited is substantial. Accordingly, where any amount deposited with the county treasurer exceeds \$10,000, the public administrator should be required to transmit relevant information concerning the deposit to the State Controller. The State Controller should be required to compile and report the information along with the information concerning estates delivered to the State Treasurer or the Controller under Section 7643 or 7644 of the Probate Code. The Commission believes that the marginal cost of adding Section 7663 estates to the others already listed by the State Controller is modest and is justified by the public benefit of the listing.

The recommended legislation amends a section of the new Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759. The recommended legislation will become operative at the same time as the new Probate Code becomes operative.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendment:

Probate Code § 7663 (amended). Distribution of property

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute to the decedent's

beneficiaries any money or other property of the decedent remaining in the possession of the public administrator.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund of the county, *subject to Article 3 (commencing with Section 50050) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. If the amount deposited exceeds ten thousand dollars (\$10,000), the public administrator shall at the time of the deposit give the State Controller written notice of the information specified in Section 1311 of the Code of Civil Procedure, and the Controller shall compile and report the information in the same manner as information concerning estates delivered to the State Treasurer or the Controller under Section 7643 or 7644 of the Probate Code.*

Comment. Section 7663 is amended to make clear that the procedure for disposition of unclaimed funds in the county treasury provided by Government Code Sections 50050-50056 applies to funds deposited by the public administrator under subdivision (b). Although the county treasurer has the duty to administer the funds deposited, a public record of the deposit is maintained by the State Controller under this section as well as by the public administrator pursuant to Section 7665.

Note. This amendment to Section 7663 is made to Section 7663 of the Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759.

546 DISPOSITION OF SMALL ESTATE BY PUBLIC ADMINISTRATOR