

First Supplement to Memorandum 66-67

Subject: Study 26 - Escheat

Attached to this memorandum as exhibits are eight letters that we have received relating to the draft escheat recommendation that the Commission considered at its October meeting. Exhibit IX is a revision of the Uniform Act that has been promulgated by the Uniform Laws Commissioners. The letters raise the following questions that the Commission should consider:

Utility Exemption

Exhibits I, IV, V, VI, and VII are all letters from various utility companies. With the exception of the first exhibit (the author of that letter apparently did not understand the significance of the proposed revision), all of the utility company letters ~~oppose~~ our proposed revision. Southern Pacific Company (Exhibit VI) which does not now enjoy the utility exemption would like to have the benefit of the existing utility exemption.

All of the utility companies argue that exempting them from the escheat provisions of this statute benefits their rate payers. Accordingly, we believe that their objections can be met by the following revisions, which we recommend.

First, we recommend that Section 1501 be revised to restore as subdivision (1) the definition of "utility" that formerly appeared in the section. The restoration, however, should be with the following revisions:

(a) (1) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, the transportation or passage of persons or property, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, whose rates are fixed by the Public Utilities Commission of this state, a

similar public agency in any other state, or the Interstate Commerce Commission of the United States .

Section 1581(d) should then be revised to exempt:

(d) Any property held by a utility which the Public Utilities Commission of this state, or other public agency that fixes the utility's rates, considers as part of the revenues of the utility in determining the rates to be charged by the utility.

This revision would provide an exemption that does not exist under existing law--i.e., of utilities engaged in the transportation or passage of persons or property.

Insurance Company Funds

Exhibit II objects to the escheat of property held by domiciliary life insurance companies where the last known address of the owner is in a state that does not provide for escheat. We see no reason to permit this property to remain unescheated and none appears in the letter.

Exhibit VIII suggests that the principle of escheating property in the hands of companies not doing business in California is impossible to enforce. We realize this fact, and hope for enforcement through cooperation with other states. See discussion of Sections 1510, 1533, etc., in the main memorandum. In this connection, the letter also points out that the domestic companies will strenuously object to reporting on a nationwide basis.

Exhibit VIII also questions subdivision (e) of Section 1510. The letter suggests that the provision may unnecessarily cause problems for persons in communist countries.

Exhibit VIII points out that the statute's use of the word "owner" in Section 1510 is ambiguous in view of the standard insurance practice of referring to someone other than the person entitled to the distribution of the funds as the "owner" of the policy. The objection may be met by revising the definition of "owner" in Section 1501 to mean, in the case of a life insurance policy, the person entitled to distribution of the funds. Exhibit VIII also objects to the alternative listing in Section 1512 of persons who may be entitled to the funds, and we recommend revision to eliminate this listing.

Exhibits II and VIII also raise the question of the validity of subdivision (b) of Section 1513. This subject is discussed in the main memorandum.

Exhibit II also questions our deletion of former subdivision (g) of Section 1530. The author believes that the revised statute makes a retro-active claim. To meet the objection, we recommend the addition of an additional subdivision to Section 1530 or to some other appropriate section in the chapter providing that no property escheated under this chapter need be reported to the Controller if the escheat occurred prior to September 18, 1959.

Traveler's Checks and similar Instruments

Exhibit III is a letter from the attorneys for American Express Company. The letter contains several suggestions for the revision of our statute to eliminate the problems which the present version would cause for American Express Company.

First, the author suggests the elimination of our provision for permanent escheat. The letter points out that in New York payments on traveler's checks issued in 1934 were still being made in 1965. The argument concerning the inconvenience of maintaining records for long periods of time is inapplicable to traveler's checks, money orders, and similar instruments because possession is conclusive proof of ownership. No record of the original owner need be kept. The possessor of the instrument may obtain payment by presenting the instrument.

Exhibit VIII also objects to permanent escheat of property in the hands of life insurance companies. The American Express objection could be met by revising Sections 1550 and 1551 (which provide for permanent escheat) to

exclude property escheated under subdivisions (c) and (d) of Section 1511. But in view of the insurance objections, we recommend that the provisions for permanent escheat be deleted or that the period for permanent escheat be substantially increased.

Exhibit III also urges restoration of Section 1560 to its original form. We have deleted from that section language which would permit a holder to honor an owner's claim and then seek reimbursement from the State Controller. In the case of American Express and other institutions which issue instruments similar to traveler's checks, it is pointed out that we are proposing to give the holder of the instrument a cause of action against the Controller instead of a right to payment from the drawee. We think the point is well taken and recommend the restoration of the deleted language to Section 1560.

Exhibit III finally raises two separate but related questions. First, the author suggests that in the case of property described by subdivisions (c) and (d) of Section 1511, escheat jurisdiction should exist in the state where the negotiable paper was issued. He states:

We recognize that this aspect of our discussion is in apparent conflict with your desire to adopt the last-address rule of Texas v. New Jersey. The draft now, in effect, exempts all traveler's checks from its provisions because no address is known. State officials in other states which have heretofore considered this problem have concluded that the holding in Texas v. New Jersey is broad enough to include place of issuance as an alternative to last-known address, under these circumstances.

Related to this suggestion is the author's suggestion that Section 1530 be revised to require a report of only the serial number, amount and date [and place] of issuance of paper described by subdivisions (c) and (d) of Section 1511. He also suggests the elimination of the notice requirements insofar as this kind of property is concerned. The amendments to the Uniform Act (Exhibit IX) reflect these suggestions.

If permanent escheat is eliminated insofar as this kind of property is concerned, and if the owner of the negotiable paper is entitled to claim directly from the holder, we see no reason to preserve the notice requirements in Section 1531 as to this kind of property.

Insofar as escheating property of this sort held by nondomiciliary corporations is concerned, the suggestion could be carried out by revising subdivision (d) of Section 1510 to provide that this state escheats property described in subdivisions (c) and (d) of Section 1511 where there is no address of the owner on the records of the holder if the instrument was issued in this state. This assertion of an escheat right may be contrary to the rules in Texas v. New Jersey. The worst that could happen, however, to such a provision would be that the United States Supreme Court would hold it unconstitutional and would hold that this state has no right to escheat property of that sort. As the statute now stands, we assert no right to escheat property of this sort. Thus, we would have nothing to lose by including such a provision, and as the author of the letter points out, it is not inconceivable that the Supreme Court would hold that such an escheat provision is within the spirit of Texas v. New Jersey. Texas v. New Jersey was merely searching for a convenient rule of thumb that could be quickly and easily applied by a holder. The proposed rule is as quickly and easily applied as any of the others suggested by the Supreme Court, and it has the added advantage (also commended by the Supreme Court) of spreading the escheat of property backing traveler's checks throughout the states in accordance with the amount of commercial activity carried on by the residents of the various states. Therefore, we recommend that Section 1510 be revised as suggested.

Compact

Exhibit IV complains that the compact will subject to escheat by the state of California a great deal of property held by the Southern Pacific Corporation when the transactions involved bear no relationship to California. The point is without merit (we believe) because the compact provision involved will apply only if Delaware, the state of Southern Pacific's incorporation, becomes a party to the compact. If Delaware becomes a party to the compact, it seems unlikely that it will do so without also adopting an escheat law which will pick up all of the property described in Exhibit IV.

Exhibit VIII incorrectly claims that the recommended compact preceded the Texas v. New Jersey decision. The compact was completed and promulgated this year. Texas v. New Jersey was decided in February 1965. In fact, the compact refers to the date of the decision to cut off claims by one state against another. See Article VI.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

Memo 66-67

EXHIBIT I

GENERAL TELEPHONE COMPANY
OF CALIFORNIA

EXECUTIVE OFFICES

2020 Santa Monica Boulevard - P.O. Box 889
Santa Monica, California 90406

AREA CODE 213
TELEPHONE 393-9311

October 27, 1966

IN REPLY REFER TO

1500
A7.4D1

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

Dear Mr. DeMouilly

Thank you for furnishing this company a draft of tentative recommendations relating to the escheat laws.

We have no comments to offer, other than to say we completely approve proposed Section 1581(d) which exempts utilities (as previously) from the escheat laws and would ultimately accrue to the benefit of our ratepayers.

Very truly yours



A. G. COOLEY
Assistant to the President -
Governmental Affairs

ES	
ALN	
AO	
AA	

Association of California Life Insurance Companies

1964 Mountain Boulevard
OAKLAND, CALIFORNIA 94611

JOHN S. KELLER
Executive Vice President

TELEPHONE
339-8500

November 4, 1966

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

Dear John:

Following up on our telephone conversation yesterday, I am "enclosing below" the comments which I received concerning the draft of the proposed Unclaimed Property Act which you sent me earlier this year. Basically, these comments are as follows:

"My first comment has to do with Section 6 of the draft on page 17. This is new to California law and follows basically the jurisdictional rules laid down in Texas vs. New Jersey. It would permit California to escheat all monies held by California domiciliary insurance corporations owing in all other states where the property is not subject to an escheat law in the other state. Constitutionally it appears that the state has the power to escheat such funds, but it is my feeling that the life insurance industry should object to such application of the California laws as a matter of policy. Apparently the California Law Revision Commission is of the opposite viewpoint, but I should think that it would be enough for California to escheat properties where the last known address is in California.

Section 9 of the draft on page 23 retains the former language which provides that if it is not certain who is entitled to the funds, the last known address of such person will be deemed to be the same as the last known address of the insured. Perhaps it does not make too much practical difference, but I wonder whether such a presumption is valid under the Texas vs. New Jersey rule.

Section 18 on page 35 would delete the language in the present escheat law which provided a time limit on how far back companies had to go for purposes of escheating property. The reason given for the omission is that the provision was a temporary one governing the initial reporting

Mr. John DeMouilly

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requirements under the existing Act. However, if a similar provision is not included in the current Act, the effect would seem to be to go back and pick up all the old items which were excluded under the 1959 Act. I believe this would be very undesirable.

There is one other item not specifically covered in the proposed text. This has to do with unpaid claim drafts paid under group accident and sickness policies. The administration of these items under the escheat laws presents many insurance companies with an almost insurmountable problem as far as operations and costs are concerned. I do not know whether it is even practical to bring up such an item, but I thought that I would at least mention the problem because it would certainly be very helpful if the law contained a specific exclusion for such types of property."

It would be appreciated if you could send me three additional copies of this draft for distribution to the other Association members.

Sincerely,



Lewis Keller

LK:md

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November 4, 1966

California Law Revision Commission
School of Law
Stanford University
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Re: California Uniform Disposition
of Unclaimed Property Act

Gentlemen:

In response to your letter dated October 18, 1966, we would like to submit on behalf of our client, American Express Company, the following comments on your Tentative Recommendation Relating to the Escheat of Personal Property, Preliminary Staff Draft, dated August 25, 1966 (the "Draft"). These comments are not intended to be exhaustive; they simply represent our preliminary reaction to certain of the salient features of the Draft dealing with travelers cheques, the issuance of which is the primary business of American Express. It is hoped that these comments will prove helpful to you.

INTRODUCTION

American Express originated the travelers cheque in 1891. It was designed to provide travelers with an instrument which would protect their funds against loss or theft, be readily negotiable and be convertible into the currency of any country in which its holder chose to cash it. Travelers cheques are sold in every state of the United States and throughout most of the world. Travelers - intra-state, interstate and foreign - are the principal purchasers, and substantial purchases are also made by business enterprises and by other persons who wish to have funds readily available in case of emergencies.

Travelers cheques are intended to and do circulate as freely as money. They are expressly designed to be valid for an indefinite period, and have always been so represented to the public. Everything about them, including their appearance, creates the impression that they are good until

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used. They bear no date of sale and no date of maturity. (See Exhibit 1 attached.) Sometimes the purchaser of a travelers cheque will date it when he negotiates it; sometimes he will not. But whether he does or not is immaterial insofar as the instrument's validity, negotiability and length of life are concerned. Since travelers cheques are sold all over the world and are accepted without question in every country in the world, there is no limit to the number of hands through which they may pass or the number of state and national borders which they may cross before they are finally presented for payment, in the case of American Express Company, at New York, New York.

PRELIMINARY COMMENTS

A. Re Permanent Escheat.

As noted at page 3 of the Draft, existing California law regarding abandoned property is custodial in nature, granting to the owner of abandoned property and his successors a perpetual right to reclaim such property (Uniform Disposition of Unclaimed Property Act, California Code of Civil Procedure, Sections 1500 et seq. /all section references herein refer to said Code unless preceded by the term "Proposed", in which event they refer to new sections proposed or revised by the Draft/).

The Draft proposes, without discussion, to reject the custodial concept in favor of a permanent escheat law, denying the owner of the property or his successors the right to reclaim the property.

The Draft would require American Express to pay the State Controller all sums due on travelers cheques outstanding for fifteen years (Proposed Section 1511(c)); five years thereafter, such sums would permanently escheat to the State (Proposed Section 1550). In effect, the Draft proposes that a travelers cheque would only be negotiable for fifteen years; for five additional years, it would merely evidence a right to attempt to obtain payment from the State (Proposed Section 1550). By so providing, the Draft fails to recognize the nature of travelers cheques, and the understanding of the

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public in purchasing them and in accepting them as payment.

American Express has always sold travelers cheques upon the representation, appearing on the face thereof, that they are "good until used - no time limit", (See Exhibit 1 attached), i.e., that the purchaser or any subsequent holder may keep them as long as he likes without forfeiting his right to ultimate payment. This representation is stressed in advertising and sales materials. The instructions issued by American Express to its nearly 40,000 selling agents direct those agents to tell purchasers that travelers cheques can be held indefinitely and that they are good until used.

Purchasers of travelers cheques and the public have come to rely upon this representation and act upon it. We base this statement primarily upon two basic facts. First, countless travelers cheques are cashed daily by persons who have no way of knowing how long they have been outstanding. Second, the record shows that a great many years may elapse between the purchase of a travelers cheque and its presentation for payment. It is American Express' experience that approximately 85% of those travelers cheques which are still outstanding five years after their issuance are presented for payment within the next ten years. Insofar as those still outstanding after fifteen years are concerned, over 60% are presented for payment within the next twelve years, i.e., by the time they are 27 years old. Although exact percentages have not been computed for the post 27-year period, the number of travelers cheques presented for payment in that period is known to be substantial. For example, in 1950 American Express paid into the New York State Abandoned Property Fund \$146,390 on account of travelers cheques sold in the year 1934. Through the year 1965, New York State has refunded to American Express \$95,330 of this amount, \$2,050 being refunded in 1965, 31 years after the date of sale.

Therefore, we submit that the Draft, particularly Proposed Section 1550, and the permanent escheat features which it proposes to introduce into California law, would if adopted cause irreparable injury to purchasers of travelers cheques who have held them for extended periods on the basis

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of the well-established indefinite negotiability and substantial equivalence to money thereof, to merchants and other persons or entities throughout the world which have accepted long outstanding travelers cheques on the same basis (having no way of knowing how long the travelers cheque has been issued), and to American Express.

It is submitted that the custodial nature of the present California law should be retained, at least as it relates to travelers cheques. The inability of the State Controller to close his books permanently would not appear to create problems of sufficient magnitude to justify such a drastic and far-reaching change in the fundamental nature of the California law. This is especially true in the case of travelers cheques, where indefinite and free world-wide negotiability is the keystone of their existence.

The Commissioners of the Uniform Disposition of Unclaimed Property Act chose a custodial rather than a permanent escheat framework for that Act after long and careful deliberation. We suggest that the considerations which impelled their choice have not changed.

B. Re Claim Requirements.

Existing California law allows the holder, e.g., American Express, to deliver custody of sums in the amount of the obligations represented by abandoned travelers cheques to the State Controller and then honor any such cheques subsequently presented by the owner thereof. Thereafter, American Express may apply directly to the State Controller for reimbursement (Sections 1512 and 1513).

The Draft drastically revises this procedure to the substantial detriment of the public which purchases travelers cheques and accepts them as payment, and American Express. It is proposed that after such payment to the State Controller, American Express may not subsequently honor the travelers cheques. Rather, the owner must personally apply to the State Controller for the funds, and even this "right" is limited for a period of five years (Proposed Sections 1550 and 1560). This proposed change in California law would

destroy the world-wide basic concept and acceptance of travelers cheques.

As discussed above, it is essential to issuers of travelers cheques and similar instruments that an abandoned property law be a custodial-type statute. Similarly, such a law should grant to issuers the right to reimbursement from the state when they make payments to owners of instruments whose proceeds the state has previously taken custody of. Unless issuers are afforded this right of reimbursement, they must either undertake to pay the instruments twice, once to the state and once to the owner, thereby inviting financial disaster, or they must refuse to honor the instruments previously abandoned to the state, thereby destroying their businesses by impairing the ready negotiability of their financial paper.

As a practical matter, this problem is not remedied by giving the owners - rather than the issuers - of such financial instruments the right to recover from the state (as proposed in the Draft). Such a procedure destroys the negotiability of instruments by putting burdensome restrictions on hitherto unobstructed channels of payment. As we have previously pointed out, purchasers will buy travelers cheques and similar instruments - and others will cash them - only so long as they know that the instruments will be paid immediately upon presentation. American Express has succeeded through the past half century in gaining world-wide confidence in and unquestioned acceptance of its travelers cheques. The Draft places this achievement in jeopardy, since it is one thing to offer a negotiable instrument to the public, but quite another to offer a claim against the state (with its attendant delay and expense), especially a claim which may already have been barred when the cheque was accepted as payment.

The comments with respect to these sections, however, seek to justify this revision of the existing claims procedure on the basis that a holder seeking reimbursement is not as likely to scrutinize the claim of the alleged owner as is the State Controller. This argument fails to recognize the qualities of travelers cheques; ownership is conclusively established by simple possession.

C. Re Reporting Requirements.

Proposed Section 1510 provides for escheat of property held by a non-domiciliary only if the last known address of the owner appearing on the records of the holder is in the State of California.

The only record which American Express has as to the identity of the purchaser of a travelers cheque is the application form which he completes at the time of purchase and which contains his signature and address. However, due to the expense of storing the millions of applications which accumulate yearly, they are retained for only six years. The signatures on the applications are frequently illegible and therefore of no value at all as to the identity of the purchaser. In addition, purchasers often fail to insert their addresses on the forms. Finally, the name and address of the original purchaser of a travelers cheque (or money order) is of no real value to the administrator of an abandoned property law because the original purchaser will in many cases have negotiated the instrument by the time the abandonment period has elapsed, and after negotiation by the original purchaser there is no way of tracing ownership.

We submit that information as to the identity of the owner of a travelers cheque serves no useful purpose even if (as is not the case) it could be obtained. Information as to ownership of property deemed abandoned under most abandoned property laws is significant for only two reasons. First, it is utilized to satisfy the notice-by-mail provisions. Second, it is utilized to assist the state in disposing of applications made by those claiming to be owners of property within its custody. Neither of those purposes is applicable to travelers cheques. Notice of abandonment is unnecessary because issuers do not deem themselves to be released from their obligation to make payment by virtue of a change in custodianship of the underlying funds. Issuers must necessarily follow this policy, for if they were to avail themselves of the release-from-liability clause contained in most statutes (such as is provided in Section 1513 and Proposed Section 1560), they would destroy the negotiability and thus

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the value of the instruments. Also, if a statute contains an appropriate refund procedure as California now has, refund claims against the state will be made by the issuer who has paid the owner and not by the owner himself, so that a record of ownership is not needed to assist the state in the disposition of claims.

For the foregoing reasons, we believe that reports to the state by the issuers of travelers cheques and similar instruments should contain only the serial numbers of the instruments, their amounts and the dates on which they were sold. For the same reasons, there is no reason for any notice provisions to apply in the case of such instruments.

We recognize that this aspect of our discussion is in apparent conflict with your desire to adopt the last-address rule of Texas v. New Jersey. The Draft now, in effect, exempts all travelers cheques from its provisions because no address is known. State officials in other states which have heretofore considered this problem have concluded that the holding in Texas v. New Jersey is broad enough to include place of issuance as an alternative to last known address, under these circumstances. It is suggested that this alternative be given careful consideration.

When we have had an opportunity to examine the Draft in more detail and to discuss it with our client, we will forward to you a more detailed discussion of the above and other points.

Respectfully submitted,

ADAMS, DUQUE & HAZELTINE

By 
Waller Taylor, II

Exhibit 1

KEEP UNUSED CHEQUES FOR FUTURE TRIPS
AND UNEXPECTED EXPENSES
Good Until Used - No Time Limit

WHEN COUNTERSIGNED BELOW WITH
THIS SIGNATURE

W0-0000-0000

BEFORE CASHING WRITE HERE CITY AND STATE

American Express Company

Pay this Cheque
to the Order of

SPECIMEN

NOT NEGOTIABLE

IN CANADA
PAID IN CANADIAN DOLLARS

IN OTHER COUNTRIES
PAID IN U.S. DOLLARS

COUNTERSIGN HEREIN PRESENCE OF PERSON CASHING

[Signature]
PRESIDENT

⑆00001⑆069⑆66⑆0000000000⑆

KEEP UNUSED CHEQUES FOR FUTURE TRIPS
AND UNEXPECTED EXPENSES
Good Until Used - No Time Limit

WHEN COUNTERSIGNED BELOW WITH
THIS SIGNATURE

RD00-0000-0000

BEFORE CASHING WRITE HERE CITY AND STATE

American Express Company

Pay this Cheque
to the Order of

SPECIMEN

NOT NEGOTIABLE

IN UNITED STATES
ONE HUNDRED DOLLARS

IN OTHER COUNTRIES
PAID IN U.S. DOLLARS

COUNTERSIGN HEREIN PRESENCE OF PERSON CASHING

[Signature]
PRESIDENT

⑆8000⑆0005⑆94⑆0000000000⑆

Southern California Edison Company

P. O. BOX 351

LOS ANGELES, CALIFORNIA 90053

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November 4, 1966

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File No.
A-4587-CDN

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMouilly
Executive Secretary

Gentlemen:

Somewhat belatedly, we received a copy of your letter of October 18, 1966, with enclosures relating to tentative revisions of the laws of escheat of personal property. We do not favor the change which is proposed with reference to the exemption of public utilities from the applicability of these laws. It is our belief that because of the closely regulated nature of our industry and the manner in which abandoned funds are handled, it is unnecessary to apply the laws of escheat to local public utility corporations.

We have discussed this matter with Mr. Malcolm K. MacKillop of the Pacific Gas and Electric Company and he has forwarded to us a copy of his letter to you of November 2, 1966. We concur with his comments concerning this subject and would be pleased to discuss this matter with you if you should deem it desirable.

Very truly yours,


Assistant General Counsel

HWS:db

PACIFIC GAS AND ELECTRIC COMPANY

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November 2, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attn: Mr. John H. DeMouilly

Gentlemen:

In reply to your letter of October 18, 1966, enclosing proposed revision of the California Uniform Disposition of Unclaimed Property Act, we wish to go on record as opposed to the suggested change in the utility exemption.

Extensive hearings were held by legislative committees prior to the adoption of the act at which hearings various utility companies made detailed presentations explaining, to the apparent satisfaction of the legislature, that because of the regulated nature of our industry and the strict requirements as to how abandoned funds were to be accounted for, utility companies should not be subjected to the act's provisions. I believe it was demonstrated that in general the rate payer and not the utility company was the beneficiary of such money as might be abandoned to it, thus putting utilities in a different category. We hope that you will reconsider your recommendation in that light and background.

Even assuming that the utility exemption were to be restricted to the general type of funds suggested by your new section 1581 (old section 1526), we do not believe that the language proposed is adequate for the purpose. However, we have not had time to adequately consider or recommend alternate language which would cover the problem effectively for

California Law Revision Commission
Attn: Mr. John H. DeMouilly

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all utilities, nor do we think it appropriate at this time to make a proposal regarding alternate language as we believe the deletion of the utility exemption as it now stands is inappropriate and should first be reconsidered in its entirety. It would seem that the objective of bringing the law into harmony with Texas v. New Jersey can be accomplished without this change.

Thank you for your consideration and for the opportunity to comment. We will be pleased to discuss the matter with you further should you so desire.

Very truly yours,


MALCOLM A. MacKILLOP

MAM:blw

Southern Pacific Company

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November 3, 1966

File: G-4561-374

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

SUBJECT: California Uniform Disposition of Unclaimed Property
Act - C.C.P. Sections 1500, et seq. and related
statutes

Dear Mr. DeMouilly:

Your letter of October 18, 1966, asked for comments from those interested in the above law concerning the suggested revision of the law attached to your October 18, 1966 letter.

Southern Pacific Company is opposed to some of the changes suggested. As a multi-state entity, the unclaimed property statutes have been exceedingly burdensome from an administrative standpoint and confusing in their application. In 1959, when the law was enacted, we regarded it as of limited reach in its application and did not seek an exemption from the law as did other public utilities. We complied by reporting our unclaimed dividends.

Subsequently the Controller claimed that items such as unpaid wages and salaries must also be reported, and originally we contested this assertion on the basis that wages were not included in the language of the law as enacted and they were not mentioned in the January 1959 Report of the Escheat subcommittee of the Assembly of the Committee on Judiciary dealing with the bill which, as amended, became the above statutes. However, we ultimately acceded to the Controller's views and have been reporting to him unclaimed wages and salaries, but only to the limited extent permitted under Texas v. New Jersey, (i.e., where the address of the claimant was known to be in California). Sections 2 and 3 of Article III of the Unclaimed Property Compact, which you propose to have enacted, would, in effect, result in escheat to California in addition of our unclaimed wages where the address of the claimant was unknown or in a state not claiming escheat on such wages. Thus, section 2 gives priority in such cases

Mr. John H. DeMouilly . . .#2

to the state of corporate domicile, but section 3 indicates that if the state of domicile does not claim (which is true of our state of domicile, Delaware) then the state where the office of the holder from which the largest total disbursements are made (California, in our case) may claim. We do not think, in fairness, that California has any just claim to these amounts and therefore are opposed to the enactment of section 3 of Article III.

We are also opposed to the proposed elimination in section 5 of the present complete exemption for public utilities, other than carriers, found in section 1501(g) and (h) C.C.P., and ask that instead it be expanded to cover railroads and other carriers. When the legislature originally enacted this law in 1959 it had good reasons for affording complete exemption to public utilities, which complete exemption is not found in the uniform law, presumably because it felt that application to these multi-state regulated industries presented peculiar administrative difficulties. As the purpose of the existing law is, in large part, to protect unknown owners by locating their property for them and to give the state rather than the holders of such items the benefit of the use of it, there is no rational difference between common carriers and the present exempt utilities which would justify exemption of the latter but not the former. Under the California Constitution, railroads and other common carriers are specifically included in the definition of "public utilities". As a matter of fact, the exemption of public utilities without including railroads and carriers is probably unconstitutional. In 1965 the legislature in fact passed a law to add railroads to this exemption, but it was pocket vetoed by the Governor, apparently because of pending litigation involving other unrelated matters under the law.

Southern Pacific, in the past, has been willing to pay unclaimed obligations upon demand of the owner without regard to when this demand is made. Both the uniform law and the existing California statutes recognize the right of the owner, at any time in the future after the property has been transferred to the state, to obtain his property if he makes a proper claim. There is no time limitation on his right to do so. The proposed revision abandons the custodial features of existing law and, when five years have elapsed after property has been delivered to the Controller, there is a complete escheat to the state and the owner's property right is gone. As the California Legislature initially recognized this as a custodial statute, as does the uniform law, I submit there is no good reason at this time to abandon the custodial features of the law.

Very truly yours,

Robert L. Pierce

1st supp 66-67

EXHIBIT VII
LAW OFFICES OF

CHICKERING & GREGORY

CODE ADDRESS
"CHICGREG"

ONE ELEVEN SUTTER STREET
SAN FRANCISCO 94104

TELEPHONE
421-3430
AREA CODE 415

November 7, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

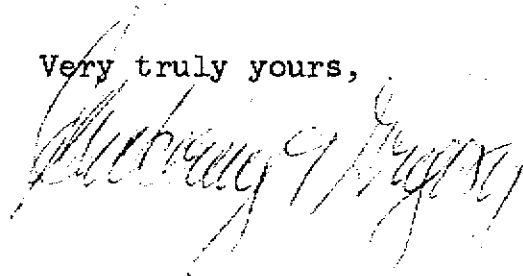
Attention: Mr. John H. DeMouilly,
Executive Secretary

Gentlemen:

Under date of October 25, 1966, you issued a memorandum to persons interested in the California Uniform Disposition of Unclaimed Property Act and related statutes, with a request for comments.

On behalf of our client, San Diego Gas & Electric Company, we concur in the objections to the proposed revision set forth in the letter to you of November 2, 1966, of Pacific Gas & Electric Company.

Very truly yours,



SC:eh

Ex. VIII

DUDLEY F. MILLER
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TELEPHONE
(415) 434-1331

November 7, 1966

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

Subject: California Uniform Disposition of Unclaimed
Property Act

Dear Mr. DeMouilly:

This is in reply to your letter of October 18, with which you sent me a copy of tentative recommendations of the California Law Revision Commission, relating to the escheat of personal property, together with the draft of the proposed measure to follow out the tentative recommendations. My reply to you is in my capacity as legislative representative of the Life Insurance Association of America. I am sorry that I did not have the comments in your hands by today, but I was out of town most of last week, and could not get to it until today.

The comments herein are preliminary only, and we would like the opportunity to make further comments if, after considering these comments and those of others, the Commission still believes it should go ahead with the tentative proposal mailed out under date of October 18 (although dated August 25).

The basic reaction of my people to the proposed revision is that this would be a step backward, since the custodial type of law is preferable for the life insurance industry, since they are in the business of paying claims and they want to be able to do this, even if, in a few instances, it may take some time to find the person entitled to the proceeds.

As pointed out in the Prefatory Notes to the Uniform Disposition of Unclaimed Property Act adopted by the National Conference of Commissioners on Uniform State Laws, the custodial-type law does not result in the loss of the owner's interests, and in addition permits using a much simpler procedure. Uniform

Mr. John H. DeMouilly

November 7, 1966

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Laws Annotated, Volume 9A, Pages 412-414.

The multitude of changes suggested in the recommended proposal certainly bears out the simplified procedure in the California custodial law. Moreover, with the microfilming processes available today, and being associated with the life insurance industry, we are unimpressed by the "avoid record keeping in perpetuity" argument advanced to support this escheat type proposal.

The particular part of the proposal which disturbs my client most (and this may be purely a question of phraseology) is the change in the introductory language of old Section 1503-- new Section 1512 (page 23). The key phrase for life insurance is "person entitled thereto." New Section 1512, first by referring to Section 1510, brings in the "owner" who may be someone other than the insured or beneficiary; then Section 1512 refers to "insured or annuitant, or beneficiary or other person entitled thereto." Someone of all these designees will undoubtedly be the "person entitled thereto," but the use of the alternative "or" recreates the unseemly race to the court house steps which was expressly rejected by the Texas v. New Jersey decision.

In addition to the principal points, as mentioned above, some other comments, in passing, are: (1) The National Conference of Commissioners on Uniform State Laws is beginning to work on revising their Uniform Law to reflect the Texas v. New Jersey decision. (2) The jurisdictional provisions under Section 1510, particularly Subsection (e), go further than the Texas v. New Jersey decision, and may conflict with other laws or unnecessarily create problems for persons residing in communist countries. (3) The unclaimed property compact prepared by the Attorneys General of the various states preceded the Texas v. New Jersey decision, was intended to avoid the necessity for that case, and may not be wholly in accord with the decision, but it seems slightly Utopian to believe that all jurisdictions would go along with California's philosophy. (4) The domestic companies (life, savings and loan and others) will probably object very strongly to filing reports covering unclaimed property on a nationwide basis. (5) The principle that companies not admitted to do business in the state must file reports and pay over to California unclaimed funds of an intangible nature is, in practical effect, virtually impossible of enforcement.

Mr. John H. DeMouilly

November 7, 1966

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Thank you for giving us the opportunity of commenting upon your proposal.

Yours very truly,



Leland B. Groezinger

LBG:C

AMENDMENTS TO
UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

In 1954, the Conference promulgated a Uniform Disposition of Unclaimed Property Act. In the operation of this Uniform Act and similar Acts, special problems have arisen concerning money orders and travelers checks, particularly those issued by an organization not properly classified as a "banking or financial institution". The amendments here proposed are to take care of these problems. The first amendment (of Section 2) indicates the nature of the amendments by adding to the persons covered by Section 2, the phrase property held or owing by "a business association". In Subsection (c) the phrase "money orders" is added to the types of sums payable and a special rule concerning the time at which abandonment is presumed is established for travelers checks. For all property subject to the section, other than travelers checks, seven years from the date payable raising the presumption of abandonment but a longer period, 15 years from the date of issuance, is established for travelers checks.

Section 11 of the original Act requires a report by the holder of abandoned property and that section is amended to eliminate the requirement of a report with respect to "travelers checks and money orders". Section 12 of the Act which required notice and publication of lists of abandoned property is also amended to eliminate travelers checks and money orders from the requirement of publication of a list. Both of these amendments are necessary because of the inability of the issuer of money orders and travelers checks to know who the holder is in most cases.

Section 13 of the original Act obligating the holder of the sums to pay or deliver the abandoned property to the state is amended so that the obligation to pay is, in the case of travelers checks or money orders, not tied to publication of the list but rather to the filing of the appropriate type of report.

Amendments to Uniform Disposition of
Unclaimed Property Act

1. Section 2 of the Uniform Disposition of Unclaimed Property Act should be amended to read as follows:

1 SECTION 2. [Property Held by Banking or Financial Organi-
2 zations or by Business Associations.] The following property
3 held or owing by a banking or financial organization or by a busi-
4 ness association is presumed abandoned:

5 (a) Any demand, savings, or matured time deposit made in
6 this state with a banking organization, together with any interest
7 or dividend thereon, excluding any charges that may lawfully be
8 withheld, unless the owner has, within 7 years:

9 (1) Increased or decreased the amount of the deposit, or
10 presented the passbook or other similar evidence of the deposit
11 for the crediting of interest; or

12 (2) Corresponded in writing with the banking organization
13 concerning the deposit; or

14 (3) Otherwise indicated an interest in the deposit as evi-
15 denced by a memorandum on file with the banking organization.

16 (b) Any funds paid in this state toward the purchase of shares
17 or other interest in a financial organization [or any deposit made
18 therewith in this state], and any interest or dividends thereon,
19 excluding any charges that may lawfully be withheld, unless the
20 owner has within 7 years:

21 (1) Increased or decreased the amount of the funds [or
22 deposit], or presented an appropriate record for the crediting
23 of interest or dividends; or

24 (2) Corresponded in writing with the financial organiza-
25 tion concerning the funds [or deposit]; or

26 (3) Otherwise indicated an interest in the funds [or de-
27 posit] as evidenced by a memorandum on file with the financial
28 organization.

29 (c) Any sum payable on checks certified in this state or on
30 written instruments issued in this state on which a banking or
31 financial organization or business association is directly liable,
32 including, by way of illustration but not of limitation, certifi-
33 cates of deposit, drafts, money orders, and travelers checks,
34 that, with the exception of travelers checks, has been outstand-
35 ing for more than 7 years from the date it was payable, or from
36 the date of its issuance if payable on demand, or, in the case of
37 travelers checks, that has been outstanding for more than 15
38 years from the date of its issuance, unless the owner has within
39 7 years, or within 15 years in the case of travelers checks, cor-
40 responded in writing with the banking or financial organization
41 or business association concerning it, or otherwise indicated an
42 interest as evidence by a memorandum on file with the banking
43 or financial organization or business association.

44 (d) Any funds or other personal property, tangible or intan-
45 gible, removed from a safe deposit box or any other safekeeping
46 repository [or agency or collateral deposit box] in this state on
47 which the lease or rental period has expired due to nonpayment
48 of rental charges or other reason, or any surplus amounts aris-
49 ing from the sale thereof pursuant to law, that have been un-
50 claimed by the owner for more than 7 years from the date on
51 which the lease or rental period expired.

2. Section 11 of the Uniform Disposition of Unclaimed Prop-
erty Act should be amended to read as follows:

1 SECTION 11. [Report of Abandoned Property.]

2 (a) Every person holding funds or other property, tangible
3 or intangible, presumed abandoned under this Act shall report
4 to the [State Treasurer] with respect to the property as herein-
5 after provided.

6 (b) The report shall be verified and shall include:

7 (1) Except with respect to travelers checks and money
8 orders, the name, if known, and last known address, if any, of
9 each person appearing from the records of the holder to be the
10 owner of any property of the value of [\$3.00] or more presumed
11 abandoned under this Act;

12 (2) In case of unclaimed funds of life insurance corpora-
13 tions, the full name of the insured or annuitant and his last known
14 address according to the life insurance corporation's records;

15 (3) The nature and identifying number, if any, or descrip-
16 tion of the property and the amount appearing from the records
17 to be due, except that items of value under [\$3.00] each may be
18 reported in aggregate;

19 (4) The date when the property became payable, demand-
20 able, or returnable, and the date of the last transaction with the
21 owner with respect to the property; and

22 (5) Other information which the [State Treasurer] pre-
23 scribes by rule as necessary for the administration of this Act.

24 (c) If the person holding property presumed abandoned is a
25 successor to other persons who previously held the property for
26 the owner, or if the holder has changed his name while holding
27 the property, he shall file with his report all prior known names
28 and addresses of each holder of the property.

29 (d) The report shall be filed before November 1 of each year
30 as of June 30 next preceding, but the report of life insurance
31 corporations shall be filed before May 1 of each year as of

32 December 31 next preceding. The [State Treasurer] may post-
33 pone the reporting date upon written request by any person re-
34 quired to file a report.

35 (e) If the holder of property presumed abandoned under this
36 Act knows the whereabouts of the owner and if the owner's
37 claim has not been barred by the statute of limitations, the
38 holder shall, before filing the annual report, communicate with
39 the owner and take necessary steps to prevent abandonment from
40 being presumed. The holder shall exercise due diligence to
41 ascertain the whereabouts of the owner.

42 (f) Verification, if made by a partnership, shall be executed
43 by a partner; if made by an unincorporated association or private
44 corporation, by an officer; and if made by a public corporation,
45 by its chief fiscal officer.

46 (g) The initial report filed under this Act shall include all
47 items of property that would have been presumed abandoned if
48 this Act had been in effect during the 10 year period preceding
49 its effective date.

3. Section 12 of the Uniform Disposition of Unclaimed Prop-
erty Act should be amended by adding a new paragraph (f) so that
the Section will read as follows:

1 SECTION 12. [Notice and Publication of Lists of Abandoned
2 Property.]

3 (a) Within [120] days from the filing of the report required
4 by Section 11, the [State Treasurer] shall cause notice to be
5 published at least once each week for 2 successive weeks in an
6 English language newspaper of general circulation in the county
7 in this state in which is located the last known address of any
8 person to be named in the notice. If no address is listed or if
9 the address is outside this state, the notice shall be published in
10 the county in which the holder of the abandoned property has his
11 principal place of business within this state.

12 (b) The published notice shall be entitled "Notice of Names of
13 Persons Appearing to be Owners of Abandoned Property," and
14 shall contain:

15 (1) The names in alphabetical order and last known ad-
16 dresses, if any, of persons listed in the report and entitled to
17 notice within the county as hereinbefore specified.

18 (2) A statement that information concerning the amount or
19 description of the property and the name and address of the hold-
20 er may be obtained by any persons possessing an interest in the

21 property by addressing an inquiry to the [State Treasurer].

22 (3) A statement that if proof of claim is not presented by
23 the owner to the holder and if the owner's right to receive the
24 property is not established to the holder's satisfaction within
25 [65] days from the date of the second published notice, the aban-
26 doned property will be placed not later than [85] days after such
27 publication date in the custody of the [State Treasurer] to whom
28 all further claims must thereafter be directed.

29 (c) The [State Treasurer] is not required to publish in such
30 notice any item of less than [\$25.00] unless he deems such
31 publication to be in the public interest.

32 (d) Within [120] days from the receipt of the report required
33 by Section 11, the [State Treasurer] shall mail a notice to each
34 person having an address listed therein who appears to be en-
35 titled to property of the value of [\$25.00] or more presumed
36 abandoned under this Act.

37 (e) The mailed notice shall contain:

38 (1) A statement that, according to a report filed with the
39 [State Treasurer], property is being held to which the addressee
40 appears entitled.

41 (2) The name and address of the person holding the prop-
42 erty and any necessary information regarding changes of name
43 and address of the holder.

44 (3) A statement that, if satisfactory proof of claim is not
45 presented by the owner to the holder by the date specified in the
46 published notice, the property will be placed in the custody of
47 the [State Treasurer] to whom all further claims must be di-
48 rected.

49 (f) This section is not applicable to sums payable on travel-
50 ers checks or money orders presumed abandoned under Section
51 2.

4. Section 13 of the Uniform Disposition of Unclaimed Prop-
erty Act should be amended to read as follows:

1 SECTION 13. [Payment or Delivery of Abandoned Property.]
2 Every person who has filed a report under Section 11, within [20]
3 days after the time specified in Section 12 for claiming the prop-
4 erty from the holder, or in the case of sums payable on travelers
5 checks or money orders presumed abandoned under Section 2
6 within [20] days after the filing of the report, shall pay or de-
7 liver to the [State Treasurer] all abandoned property specified
8 in this report, except that, if the owner establishes his right to

9 receive the abandoned property to the satisfaction of the holder
10 within the time specified in Section 12, or if it appears that for
11 some other reason the presumption of abandonment is erroneous,
12 the holder need not pay or deliver the property, which will no
13 longer be presumed abandoned, to the [State Treasurer], but in
14 lieu thereof shall file a verified written explanation of the proof
15 of claim or of the error in the presumption of abandonment.