

#26

1/3/67

Third Supplement to Memorandum 67-3

Subject: Study 26 - Escheat (Life Insurance Funds)

We attach two letters from life insurance representatives commenting on our tentative recommendation. We considered these comments at our last meeting and are including these letters so that you will have them available in connection with the problem of permanent escheat.(discussed in the basic memorandum).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Exhibit I

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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

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

Yours very truly,


Leland B. Groezinger

LBG:C

EXHIBIT II

Association of California Life Insurance Companies

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LEWIS KELLER
Executive Vice President

November 4, 1966

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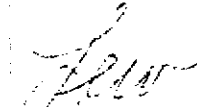
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requirements under the existing Act. However, if a similar provision is not included in the current Act, the effect would seem to be to go back and pick up all the old items which were excluded under the 1959 Act. I believe this would be very undesirable.

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