

1/22/68

First Supplement to Memorandum 68-14

Subject: Study 26 - Escheat

Exhibit I (attached) contains the comments of the representative of the Life Insurance Association of America (Mr. Leland B. Groezinger). The comments are directed to the mimeographed draft of the recommendation and some revisions were made before the recommendation was printed that mitigate to some extent the concern expressed in the comments. (Specifically, Section 1512 was combined with Section 1515, thus collecting in one section two provisions that related to life insurance corporations.) The following is an analysis of the comments.

Section 1515

As Exhibit I points out, the Comment to Section 1515 is not technically accurate. Moreover, an expansion of the Comment would be helpful to an understanding of the combined effect of Sections 1510 and 1515. Exhibit II (attached) contains a revised Comment to Section 1515 and also revised Comments to Sections 1516 and 1518 (both of which have the same technical defect as the Comment to Section 1515). The staff recommends that these revised Comments be approved and that the Commission recommend that the legislative committee that hears the bill on this subject adopt a report containing these revised Comments.

Revision of Section 1530

Exhibit I suggests the following revisions in this section:

(a) In subdivision (b)(1), change "more than ten dollars (\$10)" to "twenty-five dollars (\$25) or more".

(b) In subdivision (b)(4), change "of ten dollars (\$10) or less" to "under twenty-five dollars (\$25)".

The second paragraph of the Comment to Section 1530 should be revised to conform to this change if the Commission approves the change. The following is recommended in place of the second paragraph:

In paragraphs (1) and (4) of subdivision (b), the phrase "ten dollars (\$10)" has been changed to "twenty-five dollars (\$25)" to reduce the administrative burden and expense on holders and to conform to the notice and publication requirements of Section 1531.

The Uniform Act requires itemization of names and addresses of apparent owners where the amount involved is \$3 or more. The following is a tabulation of the amounts provided in the various state statutes that are based on the Uniform Act:

- \$50 - Indiana (in absence of request by the attorney general to the holder that such items be reported individually), Virginia, West Virginia (3 states)
- \$25 - Florida, Idaho, Illinois, Oklahoma (4 states)
- \$10 - California, Maryland, New Hampshire, Vermont, Washington (5 states)
- \$5 - Arizona, New Mexico (2 states)
- \$3 - Montana, Oregon, Utah (3 states)

Iowa adopted an escheat law in 1967, but the text is not available.

Several of the recently adopted statutes impose a \$50 limit.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DUDLEY F. MILLER
LELAND B. GROEZINGER
JOSEPH MARTIN, JR.
WALTER F. PETTIT
WILLIAM D. EVERS
HAROLD C. NACHTRIEB
J. RONALD PENGILLY
SHELDON H. WOLFE
D. CAMERON BAKER
JOHN E. PARKS IV
THOMAS W. KEMP
ALLAN J. JOSEPH
REVERDY JOHNSON
JAMES T. CALESHU
LOUIS HONIG, JR.
EMMETT F. HARRINGTON
RICHARD A. DUMKE
MARTIN QUINN

MILLER, GROEZINGER, PETTIT, EVERS & MARTIN
ATTORNEYS AT LAW

THE HARTFORD BUILDING
TWENTIETH FLOOR

650 CALIFORNIA STREET - SAN FRANCISCO, CALIFORNIA 94108

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THOS. A. ALLAN
WILLIAM H. KEESLING
OF COUNSEL

TELEPHONE
[415] 434-1331

CABLE ADDRESS:
MILLMART

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

Re: Escheat

Dear John:

Thank you for sending me the September 1967 Recommendation relating to Escheat.

I now have some comments from my people (Life Insurance Association of America) on this draft. I am quoting herein these comments which are directed to an earlier mimeographed draft rather than to the printed September 1967 draft. I am sure you will have no difficulty in correlating them:

"Thus, there seems to be no good reason for changing either the nature of the California law or the life insurance provisions in any substantial respect.

As for specific comments to the recommendations as they affect us, there seems to be very little substantive change between the present and proposed legislation, but the phraseology is so different that I wonder whether the courts, if called upon, would interpret them the same.

The language in Section 1510 (p.27) and Section 1512 (p.31) seems to be somewhat contradictory, in that Section 1510 talks about the "apparent owner" and Section 1512 applies when "it is not definite and certain *** who is entitled to the funds."

The Comment to Section 1515 (p.38) is totally misleading. The present law applies to out-of-state life insurance companies, and they are reporting to the state as necessary (many years there are no unclaimed funds to report). For example, Metropolitan paid California something in the nature of \$1,000,000 when the law was first enacted. Also, it would be helpful if Section 1515 were to state clearly that it applied only when the owner of the funds was a resident

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of California according to the records of the insurer, rather than to rely wholly on the cross-reference to Sections 1510 and 1512.

In the area of administrative convenience in reporting and correlation of requirements, it would be desirable in Section 1530(b)(4) (page 50) if the \$10 minimum amount for itemized reporting were increased to \$25. The itemized amounts reported by the companies would then be consistent with the minimum amount which the State Controller must include in his published list pursuant to Section 1531(d)(e) (p.53(a)). If anything, the administrative work involved for the companies in reporting amounts between \$10 and \$25 is greater than the work of the State Controller, who merely has to copy the list submitted to him by the companies. [The present law could be similarly amended.]"

I am sorry that these comments came so late. I would appreciate hearing from you at your earliest convenience as to your reaction to them.

Sincerely yours,


Leland B. Groezinger

LBG:rb

EXHIBIT II

Section 1515 (Funds held by life insurance corporation)

Revise Comment to read as follows:

Comment. Section 1515 restates the substance of former Section 1503. The section applies to all life insurance corporations, whether or not they transact business in California. See Section 1501(g).

When the insured or annuitant is entitled to the funds, the funds are payable to California if his last known address, as shown on the records of the corporation, is in California. See Section 1510(a). If his address is not shown on the records of the corporation, the determination as to whether California is entitled to the funds is made under subdivisions (b) through (e) of Section 1510.

Where a person other than the insured or annuitant is entitled to the funds, the funds are payable to California if the last known address, as shown on the records of the corporation, of the person entitled to the funds is in California. See Section 1510(a). If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, the presumption provided by subdivision (b) of Section 1515 operates to determine the last known address of the person entitled to the funds (the "apparent owner") for the purposes of subdivision (a) of Section 1510. See Section 1501(a)(defining "apparent owner"). Concerning this presumption, see the discussion in Recommendation Relating to Escheat, 8 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1001, 1012-1013 (1967). See also Section 1542(a)(4)(right of another state to recover funds escheated to California by application of the presumption).

Section 1516 (Dividends and distributions of business associations)

Revise Comment to read:

Comment. Section 1516 is substantially the same as former Section 1504. Changes have been made to provide for the escheat of property held by a business association whether or not the association does business in this state.

Section 1518 (Property held by fiduciaries)

Revise Comment to read:

Comment. Section 1518 is substantially the same as former Section 1506. Changes have been made to clarify the meaning of the section and to make it apply whether or not the fiduciary or business association does business in California.