11/9/81

First Supplement to Memorandum 81-68

Subject: New Topics

We have received a letter from Mr. William I. Groth, Vice President and Trust Officer, of the California Canadian Bank (Exhibit 1 attached) suggesting a clarifying revision in the law relating to escheat. The Commission has retained this topic on its agenda so that it could recommend any necessary changes in the comprehensive escheat legislation enacted upon Commission recommendation.

Mr. Groth suggests that consideration should be given to amending Probate Code Section 231(c) to conform to Code of Civil Procedure Section 1521. His letter indicates the difference between the two provisions.

We sent a copy of Mr. Groth's letter to the ofice of the State Controller (which administers the Unclaimed Property Act) and requested comments. That office agrees that the Probate Code provision should be made consistent with the Code of Civil Procedure provision and suggests specific language to accomplish this result. See Exhibit 2 attached.

Drawing on the suggested language of the office of the State Controller, the staff has prepared an amendment to Section 231 of the Probate Code. This is attached as Exhibit 3. We propose that the Commission submit this proposed legislation to the 1982 session for enactment. We would not prepare a recommendation to accompany the bill; we would merely give the bill to Assemblyman McAlister to introduce. For your information, we attach a copy of the Code of Civil Procedure provision (Section 1521) as Exhibit 4.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Exhibit 1

1st supp Memo 81-68

CALIFORNIA
CANADIAN BANK

HEAD OFFICE · 340 PINE STREET · SAN FRANCISCO, CALIFORNIA 94104 · (415) 362-5210

September 1, 1981

California Law Revision Commission
400 Middlefield Road D-2
Palo Alto, CA 94306

Gentlemen :

The 1951 version of Section 1410 of the Code of Civil Procedure provided that there would be no escheat of employee trust benefits.

In 1972 the Code of Civil Procedure was amended to provide in Section 1521 that there would be escheat of such benefits unless the employee benefit plan contained a provision for forfeiture.

However, Section 231(c) of the Probate Code continues to provide, that notwithstanding any other provision of law, employee trust benefits shall not escheat but shall remain in trust until it terminates.

Inasmuch as a missing person is presumed dead after 7 years, Section 231(c) of the Probate Code would appear to prevail over Section 1521 of the Code of Civil Procedure. Perhaps consideration should be given to amending the Probate Code to conform to the Code of Civil Procedure.

Yours very truly,

William I. Groth

William I. Groth
Vice President &
Trust Officer

WIG:ed

Exhibit 2

KENNETH CORY
CONTROLLER

1st Supp Memo 81-68

AREA CODE 916-445-8318

Controller of the State of California
DIVISION OF UNCLAIMED PROPERTY
P. O. BOX 1019
SACRAMENTO, CALIFORNIA 95805

November 5, 1981

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Dear Mr. DeMoully:

This letter is in reply to your request for my comments regarding the proposed amendment of Probate Code Section 231(c). Your request was prompted by a letter from William Groth of California Canadian Bank recommending that Section 231(c) be amended to conform to Code of Civil Procedure Section 1521.

I agree with Mr. Groth that it would make sense to have Section 231 in substantial conformity with Section 1521. Conforming the sections may be an idle act if, as contended by the U. S. Department of Labor, the provisions of ERISA (29 U.S.C. Section 1000, et seq.) entirely preempt state laws which in any way relate to employee benefit plans. Nevertheless, until this issue is resolved, I believe it would be advisable to amend Section 231 so that undistributed employee benefits of a decedent would escheat to the state under the same conditions as specified in Section 1521.

Towards accomplishing this end, I would propose the following language:

> (c) Notwithstanding any other provision of law, a benefit consisting of moneys or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits shall not pass to the state or escheat to the state as provided herein, but shall go to the trust or fund from which distributable. If, however, such plan has terminated and the trust or fund has been distributed to the beneficiaries thereof prior to distribution of such benefit

from the estate, such benefit shall pass to the state and escheat to the state as provided herein.

I would appreciate hearing from you if you have any questions.

Sincerely,

Tom Holland

Thomas F. Holland, Jr., Chief
Division of Unclaimed Property

TFH:bcn

EXHIBIT 3

An act to amended Section 231 of the Probate Code, relating to escheat.

The people of the State of California do enact as follows:

SECTION 1. Section 231 of the Probate Code is amended to read:

231. (a) If a decedent, whether or not he was domiciled in this state, leaves no one to take his estate or any portion thereof by testate sucession, and no one other than a government or governmental subdivision or agency to take his estate or a portion thereof by intestate succession, under the laws of this state or of any other jurisdiction, the same escheats at the time of his death in accordance with this article.

(b) Property passing to the state under this article, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure relating to escheated estates.

(c) Notwithstanding any other provision of law, a benefit consisting of moneys or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits shall not pass to the state or escheat to the state under this article , but shall go to the trust or fund from which distributable subject to the provisions of Section 1521 of the Code of Civil Procedure . If, however, such plan has terminated and the trust or fund has been distributed to the beneficiaries thereof prior to distribution of such benefit from the estate, such benefit shall pass to the state and escheat to the state ~~as provided herein~~ under this article .

EXHIBIT 4

CODE OF CIVIL PROCEDURE SECTION 1521

§ 1521. Employee benefit trust distributions, income and other increments; conditions; exceptions

(a) Except as provided in subdivision (b), and subject to Section 1510, all employee benefit trust distributions and any income or other increment thereon escheats to the state if the owner has not, within seven years after it becomes payable or distributable, accepted such distribution, corresponded in writing concerning such distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which such trust or fund is established. As used in this section, "fiduciary" and "administrator" shall have the meaning provided in Section 28002 of the Corporations Code.

(b) An employee benefit trust distribution and any income or other increment thereon shall not escheat to this state if, at the time such distribution shall become payable to a participant in an employee benefit plan, such plan contains a provision for forfeiture or expressly authorizes the trustee to declare a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time specified in such plan, and the trust or fund established under the plan has not terminated prior to the date on which such distribution would become forfeitable in accordance with such provision.

(Added by Stats.1972, c. 856, § 4.)