

Memorandum 89-67

Subject: Study L-1040 - Public Administrators (Property Deposited with County Treasurer)

Probate Code Sections 7660 to 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 there are no beneficiaries of the decedent, the public administrator deposits the balance with the county treasurer for use in the general fund. Section 7663(b). Gary V. Waits, an inheritance investigator, has written to us (Exhibit 1) that under this procedure the public administrator may not have made a thorough search for heirs, and the escheat to the county is not publicized; moreover, the law fails to specify any period of time for beneficiaries to later make a claim on escheated funds.

The staff believes Mr. Waits may be correct. Although there is a general procedure in the Government Code for beneficiaries to make a claim on funds deposited with the county treasurer, the staff believes we may have inadvertently side-stepped that procedure by specifying in Section 7663 that the funds are deposited "with the county treasurer for use in the general fund."

The general Government Code procedure is found at Sections 50050 to 50056. Those 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 on 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.

This general procedure is applicable to unclaimed funds deposited with the county treasurer from any source, including probate. The staff believes it is necessary to negate the implication in Probate Code Section 7663 that the general procedure does not apply to summary disposition deposits by the public administrator. The staff would revise Section 7663 to read:

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.

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 to 50056

applies to funds deposited by the public administrator under subdivision (b).

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



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24 June 1989

CA LAW REV. COMMITTEE

JUN 28 1989

R E C E I V E D

Mr. John DeMolly
Executive Secretary
California Law Review Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

re: Public Administrator Probate Code Revisions

Dear Mr. DeMolly:

Thank you for speaking with me by telephone Monday June 19th.

I am an inheritance investigator specializing in locating missing persons and heirs to estates through genealogical and probate research.

As we discussed, my reading of the 1988 amendment to Probate Code Section 7663(b) presents a potential problem in that where there are no beneficiaries, the Public Administrator is directed to distribute property of the estate to the County general fund. Reading Section 7660(a)(1), which refers to Section 13100, the Public Administrator has authority to take possession of an estate up to the total value of \$60,000.00.

Previously, the Public Administrator was required to escheat estates exceeding \$10,000. to the State Controller, who has an active program to search for persons entitled to the funds deposited with his office and hold them for at least five years. The difference is that the County Treasurer is under no obligation to search for the persons entitled to the funds and after one year they are deposited into the county's general fund.

Do you agree that the net effect of this change in the Summary Disposition of Small Estates is that any amount under \$60,000.00 may be deposited with the County Treasurer without prior public disclosure and without a period of time within which heirs may present claims?

Without the disclosure provided by the present system, the vast majority of heirs, not located by the Public Administrator, may never know they are entitled to an inheritance. Armed with

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the information provided by this disclosure, I use public records and document research to locate heirs, many of whom take by intestate succession. Who else speaks for unknown heirs? It appears that the Public Administrators, who deliver the funds to the county for whom they are employed, have a conflict of interest which interferes with their obligation to search for the rightful heirs to those same funds.

If this legislation was intended to provide more funds to cover the expenses incurred by the Public Administrator in handling small estates, then a more practical solution might be to increase the fees paid Administrators in small estates.

Thank you for your concern with this problem.

Respectfully yours,



GARY V. WAITS

GVW/hs