

First Supplement to Memorandum 89-67

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

Attached to this memorandum as Exhibit 1 is a copy of a memo from the Alameda County Counsel indicating that existing law is ambiguous on the issue of whether funds deposited in the county treasury escheat to the county immediately or whether they must be held for some period of time before the county may appropriate them (and if so, for how long). The memo indicates that the county would prefer the interpretation that the property escheats immediately, but that in any case the law should be amended so that it is clear. The staff agrees with this analysis, and the scheme proposed in Memorandum 89-67 would make clear that there is a three-year holding period consistent with the general county holding period for unclaimed property.

Attached as Exhibit 2 is a letter from Gary V. Waits Investigations. Mr. Waits does not believe the scheme proposed in Memorandum 89-67 (county treasurer holds for three years, then advertises in legal newspapers, and determines any claims received) is adequate. He points out that most public administrators lack sufficient staff and funds to conduct a thorough search for heirs, and there is an inherent conflict of interest since unclaimed estates go to the county. He suggests that the State Controller has the knowledge and expertise to search for heirs and handle claims. His proposed approach is to have the county treasurer hold funds received from the public administrator for five years, during which time the State Controller would advertise and process claims.

The staff believes the State Controller would oppose such a scheme unless the state were to receive the escheated funds or the State Controller were reimbursed for expenses in administering the system. We assume that Mr. Waits' concern is not so much that there be an extensive publicly-financed search for heirs, but that the private sector be adequately alerted so that it may make an appropriate

search. For this purpose the Controller need not be required to administer the system, but simply to act as a central repository of information about small estates that have been turned over to the treasurers by the public administrators in all counties. This need could be satisfied by a provision along the following lines:

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. If the amount deposited exceeds \$10,000, the public administrator shall at the time of the deposit give the State Controller written notice of the information specified in Section 1311 of the Code of Civil Procedure, and the Controller shall compile and report the information in the same manner as information concerning estates delivered to the State Treasurer or the Controller under Section 7643 or 7644 of the Probate 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). Although the county treasurer has the duty to administer the funds deposited, a public record of the deposit is maintained by the State Controller, as well as by the public administrator pursuant to Section 7665.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



ALAMEDA COUNTY
SACRAMENTO LEGISLATIVE OFFICE

LYNN M. SUTER
LEGISLATIVE ADVOCATE
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COMMISSION
JUL 26 1989
RECEIVED

July 25, 1989

Mr. Nat Sterling
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Probate Code Sections 7660 et seq.
Deposit of Unclaimed Small Estate Funds

Dear Mr. Sterling:

Thank you for your update concerning Probate Code Sections 7660 et seq., operative July 1, 1989, with respect to the deposit of unclaimed small estate funds by the public administrator. Enclosed are the comments received from the Alameda County Counsel's office concerning the absence of time limitations on the claims of the heirs, devisees and beneficiaries.

You mentioned to me that you will soon recommend to the Commission how to proceed with this matter and that you expect the clean-up amendment to be part of legislation next year.

I look forward to receiving a copy of your recommendation as well as a copy of the proposed amendment to AB 831 concerning compensation for personal representatives and attorneys in the administration of decedents' estates.

Thank you again for your time and assistance.

Sincerely,

Kathleen Cole

Enclosure

cc: Grace Tam, Deputy County Counsel
Don Graff, County Legislative Coordinator

-1-

COUNTY COUNSEL



Memorandum

DATE: April 17, 1989

TO: Don Graff, County Administrator's Office QIC 20102
Kathy Cole, County Administrator's Office QIC 20102

FROM: Grace Tam, Deputy County Counsel QIC 20104 *Grace Tam*

SUBJECT: Proposed Clean-Up Amendment on the Probate Code

Existing Probate Code § 1143(b) provides for deposit of unclaimed small estate funds by the public administrator with the county treasurer for use in the general fund after one year of deposit. The section specifies that the heirs, devisees, or beneficiaries can claim those funds within the one year of deposit.

This section is repealed and replaced by new probate Code §§ 7660 et seq., operative July 1, 1989. The new sections, however, do not include any time limitations on the claims of the heirs, devisees, or beneficiaries surfacing after the funds are deposited with the county treasurer. The new language under § 7663(b) "the public administrator shall deposit the balance with the county treasurer for use in the general fund" appears to do away with all rights of claim of the heirs, devisees, or beneficiaries. The County and the Public Administrator would prefer that interpretation. However, the language does leave the issue somewhat open for argument that some lengthier statute of limitations applies.

If indeed the legislative intent behind the new section 7663(b) is to abolish the rights of claim of the heirs, et al., and allow the county immediate use of the funds, I suggest that the section be amended as follows:

(b) if there are no known beneficiaries at the time of distribution, the public administrator shall deposit the balance with the county treasurer for use in the general fund. Once deposited in the general fund, the funds shall not be subject to the subsequent claims of any heir, devisee, or beneficiary of the decedent.

Otherwise, the section should be amended to show the applicable time limit.

GT/me:0086J

GARY V. WAITS INVESTIGATIONS

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31 July 1989

LA LAW REV. COMM'N

AUG 02 1989

RECEIVED

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

re: Property deposited with county treasurer - probate code section 7663

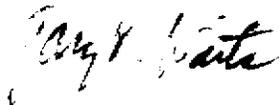
Dear Mr. Sterling:

I have your letter of 25 July 1989. Thank you.

I am enclosing a copy of a letter to O. Gerald Fields, Tulare County Treasurer for your review, which states my position. . ."that counties should be allowed to keep all properties under \$60,000.00 and any interest, after a five year period, during which time the state controller would advertise and process all claims."

Thank you for your attention to this matter.

Respectfully yours,



Gary V. Waits

GVW/hs
ENCLOSURES

GARY V. WAITS INVESTIGATIONS

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29 July 1989

O. Gerald Fields
Tulare County Treasurer
Rm 103e, Civic Center
Visalia, CA 93291

re: Property deposited with county treasurer - probate code
section 7663

Dear Mr. Fields:

Thank you for talking with me Thursday, by telephone, regarding recent changes in the California probate code.

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

In 1988 the probate code was changed to allow the public administrator, in small estates, where there are no beneficiaries, to deposit balances with the county treasurer, allowing no period of time for heirs of intestate succession to make a claim, and with no provision for a public notice at the state or county level. In previous years, a petition for probate was filed with the county clerk for all estates over \$10,000.00 and leftover funds were escheated to the state controller to be advertised and distributed to heirs. Estates under \$10,000.00 were considered summary or small estates. Now, all estates under \$60,000.00 are termed summary or small estates.

Mr. Douglas A. Caplan, President of the California Public Administrators Association stated to me that his organization promoted the change in the code to provide more funds to counties.

I believe most public administrators lack sufficient staff and funds to conduct an involved investigation for heirs of the decedent, which could create a conflict. By not notifying the State Controller, a place where maximum publicity could be realized, funds are immediately deposited with the county treasurer who is not charged with the duties of locating heirs, a function presently assigned to the public administrator.

Letter to Mr. O. Gerald Fields
29 July 1989
Pag 2

As you requested, I am enclosing copies of materials recently received from the California Law Revision Commission and other correspondence for your review.

The commission has asked me to submit an alternate solution, as their latest approach, in my opinion, does not take into consideration possible public administrator conflict and a system in the counties for processing claims. Accordingly, the process for properly identifying potential heirs to estates is a complicated procedure, usually left to the courts but presently undertaken by the county treasurer for all claims (under \$60,000.00), and the state controller, in concurrence with the state attorney general, for all claims (over \$60,000.00).

My view is that counties should be allowed to keep all properties under \$60,000.00 and any interest, after a five year period, during which time the state controller would advertise and process all claims.

Your interest in this matter is appreciated.

Kindest regards,

Gary V. Waits

GVW/hs
ENCLOSURES

cc: John Conway, Supervisor
cc: Gerald Sevier, District Attorney/Public Administrator