

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



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May 25, 1984

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Claim of the District of
Columbia to Certain Unclaimed
Property in the Possession of
the Comptroller of the Currency

Mr. Jeffrey L. Humber, Jr.
Director
Department of Finance and Revenue
300 Indiana Avenue, N. W.
Washington, D. C.

Dear Mr. Humber:

This is in reply to your request dated May 4, 1984, for an opinion of this Office regarding the District's claim to certain unclaimed property in the possession of the Controller of the Currency. It is my opinion that such property is subject to the claim of the District. My reasoning follows.

I

INTRODUCTION

Section 1408 of the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1513 (1982), 12 U.S.C. secs. 216 et seq., (hereinafter referred to as the "Garn Act"), authorizes states to take custody of the contents of safe deposit boxes of closed national banks (hereinafter referred to as "unclaimed property") in the possession of the Comptroller of the Currency (hereinafter referred to as the "Comptroller"). Section 20 of an Act to amend the national banking laws to clarify or eliminate ambiguities, to repeal certain laws which have become obsolete, and for other purposes, Pub. L. 86-230, 73 Stat. 465 (1959), 12 U.S.C. sec. 215b, defines "state" to include the District of Columbia.

Section 733(b)(1) of the Garn Act expressly requires the Comptroller to deliver unclaimed property to a state after receiving proof therefrom that it is entitled to the property.

Section 732(3) allows for states to claim the unclaimed property "...under applicable statutory law, asserting a demonstrable legal interest in title to, or custody or possession of, unclaimed property."

II

**THE ABANDONED PROPERTY LAW OF THE DISTRICT
OF COLUMBIA APPLIES TO THE CONTENTS OF SAFE
DEPOSIT BOXES HELD BY NATIONAL BANKS**

Section 115 of the District of Columbia Uniform Disposition of Unclaimed Property Act, D.C. Law 3-160, effective March 5, 1981 (hereinafter referred to as the "District Act"), D.C. Code, sec. 42-215 (1981), expressly presumes abandoned the contents of unclaimed safe deposit boxes. It states:

Except as provided in section 3 of an Act to revise certain laws with respect to the liability of hotels, motels, and similar establishments in the District of Columbia to their guests, approved December 8, 1970 (84 Stat. 1396; D.C. Code, sec. 34-108), all personal property tangible or intangible, held in a safe deposit box or any other safekeeping repository in the District by any person in the ordinary course of business, which is unclaimed by the owner for ten (10) years or more from the date on which the lease or rental period on the box or other repository expired is presumed abandoned.

Sections 117 and 119 of the District Act, D.C. Code, secs. 42-217 and 42-219, require every person holding property presumed abandoned to report such property to the Mayor, then to pay it over. These provisions of the District's law apply to property in the possession of the Comptroller.

Section 102 of the District Act, D.C. Code, sec. 42-202, defines "holder" and "person" as follows:

(10) "Holder" means any person wherever organized or domiciled:

- (A) In possession of property belonging to another;
- (B) Who is a trustee in case of a trust; or
- (C) Who is indebted to another on an obligation.

(16) "Person" means an individual, business association, government or governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

Attached hereto as Exhibit A is a true and correct copy of all provisions of the abandoned property law of the District.

III

THE PURPOSE OF ABANDONED PROPERTY LEGISLATION IS TO REUNITE MISSING OWNERS WITH THEIR PROPERTY

Numerous cases have construed the operation and effect of custodial unclaimed property legislation. All decisions have concluded that one of the primary purposes is to reunite the missing owner with the unclaimed property.

In the first Supreme Court case to review a state's unclaimed property law, the court upheld the constitutionality of Massachusetts' legislation reasoning as follows:

"The statute deals with accounts of an absent owner, who has so long failed to exercise any act of ownership as to raise the presumption that he has abandoned his property. And if abandoned, it should be preserved until he or his representative appears to claim it; or failing that, until it should be escheated to the state. The right and power so to legislate is undoubted." Provident Institution for Savings v. Malone, 221 U.S. 660, 662 (1911).

Similarly the Supreme Court in considering the provisions of New York's abandoned property law concluded:

"There is ample provision for notice to beneficiaries and for administrative and judicial hearing of their claims and payment of same. There is no possible injury to any beneficiary." Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541, 547 (1947).

Numerous state courts have reviewed the provisions of their custodial abandoned property legislation. For example, the purpose of the 1954 Uniform Disposition of Unclaimed Property Act has been explained as follows:

"The objectives of the Act are to protect unknown owners by locating them and restoring their property to them and to give the state rather than the holders of unclaimed property the benefit of the use of it" Douglas Aircraft Co. v. Cranston, 58 Cal. 2d 462, 463, 374 P.2d 819 (1962).

Accordingly, pursuant to section 118 of the District Act, D.C. Code, sec. 42-219 the District in attempting to locate the lawful owners of the unclaimed property will advertise their names in a newspaper of general circulation and mail notices to the missing owners.

IV

THE DISTRICT'S ABANDONED PROPERTY LEGISLATION IS NOT PREEMPTED BY FEDERAL LAWS REGULATING NATIONAL BANKS

Long ago the Supreme Court upheld the constitutionality of state unclaimed property laws as applied to national banks. In Anderson National Bank v. Lockett, 321 U.S. 233 (1944), the Court reviewed Kentucky's abandoned property law and held:

"Under the statute the state merely acquires the right to demand payment of the accounts in the place of the depositors. Upon payment of the deposits to the state, the bank's obligation is discharged. Something more than this is required to render the statute obnoxious to the federal banking laws. For an inseparable incident of a national bank's privilege of receiving deposits is its obligation to pay them to the persons entitled to demand payment according to the law of the state where it does business. A demand for payment of an account does not infringe on or interfere with any authorized function of the bank. In fact inability to comply with such demands is made a basis in the national banking laws for closing the doors of a bank and winding up its affairs." Anderson, supra, 321 U.S. at 248, 249.

Subsequently the Supreme Court in the case of Roth v. Delano, 338 U.S. 226 (1949), held that state abandoned property legislation as applied to a liquidated national bank was constitutional. Since Congress has in the Garn Act expressly authorized states to claim the contents of safe deposit boxes in the possession of the Comptroller, a contention of federal preemption cannot be sustained.

V

**THE STATES HAVE THE EXCLUSIVE POWER TO
REGULATE THE DISPOSITION OF ABANDONED
PROPERTY**

In the event that an owner fails to file a claim to the unclaimed property within a twelve-month period, the Garn Act purports to bar the claim of the owner. Thereafter, unless the custody of the property is given to the District pursuant to the claim made herein, the property will be escheated to the federal government and the lawful owners will be deprived of their property. See Garn Act, sec. 733(c)(1).

Only where the unclaimed property has resulted from federal munificence, such as in the case of veteran pensions, have the courts recognized a right on the part of the federal government to claim the property of the recipient. See for example, *In re Lindquist's Estate*, 25 Cal.2d 697, 154 P.2d 879, cert. denied, 325 U.S. 869 (1944).

VI

**THE PROVISIONS OF THE LAW OF THE DISTRICT
APPLY TO CONTENTS OF SAFE DEPOSIT BOXES NOW
IN THE POSSESSION OF THE COMPTROLLER**

Unclaimed property legislation has always been construed to apply retroactively to property in existence at the time of adoption of the legislation. The only limitation which has been placed on the retroactive operation of such legislation is that in most states the statutory provisions will not be construed so as to revive claims on which the statute of limitations as between the holder and the owner has expired.

In *Security Savings Bank v. California*, 263 U.S. 282 (1923), the Supreme Court held that application of California's unclaimed property law to deposits more than 30 years old did not violate the Contracts Clause in the Federal Constitution. The Court reasoned that, "The contract of deposit does not give the banks a tontine right to retain the money in the event it is not called for by the depositor", 263 U.S. at 286.

Similarly in *Anderson National Bank v. Reeves*, 293 Ky. 735, 170 S.W.2d 350 (1942), aff'd, 294 Ky. 674, 172 S.W.2d 575 (1943), aff'd sub nom. *Anderson National Bank v. Lockett*, 321 U.S. 233 (1942), the Kentucky abandoned property law was held to be valid in its application to deposits in a national bank "made both prior and subsequent to the effective date of the Act", 293 Ky. at 744.

In *Pennsylvania v. New York*, 407 U.S. 206 (1972), the Supreme Court held that its 1965 ruling in *Texas v. New Jersey*,

379 U.S. 674 (1965), regarding which state could claim abandoned property applied retroactively to money orders issued by Western Union in 1930. The court then noted that, "Insofar as the invocation of any provision of the Revised Uniform Disposition of Unclaimed Property Act [1966] would be inconsistent with this decree, the decree prevails", 407 U.S. at 215 n.8. Thus the Court in addressing itself to the Uniform Act promulgated in 1966 necessarily assumed its provisions applied to property abandoned 30 years prior to adoption of the Act.

The 1954 Uniform Disposition of Unclaimed Property Act provides a typical example of the retroactive operation of abandoned property legislation. Section 2(d) of the Uniform Act presumes the abandonment of the contents of safe deposit boxes which have been unclaimed for "more than seven years". Section 11(g) requires the initial report be prepared as if the Act had been in effect during a ten year period prior to adoption of the Act. Several cases have construed these provisions to make all existing abandoned property subject to the Uniform Act provided only that the owner's claim to the property was not time-barred on the effective date of the legislation. See, Douglas Aircraft Co. v. Cranston, 58 Cal. 2d 469, 374 P.2d 819, (1962) ("existing abandoned property is subject to the Act"); Country Mutual Insurance Co. v. Knight, 40 Ill.2d 423, 240 N.E.2d 612 (1968) ("existing abandoned property subject to the Act").

Congress intended that states would be entitled to claim the unclaimed property pursuant to existing abandoned property laws whenever adopted. The Report of the Committee on Banking, Housing and Urban Affairs, United States Senate, accompanying the Garn Act, provided:

"A state may assert a right to possession of any unclaimed property during the twelve month claim period if it has a law, whenever adopted, that permits it to take custody of such property.

Any state with such a law shall be deemed to have provided adequate proof that it is entitled to such property, which was removed from a closed national bank located in that state, unless a claim by another person or entity to such property is determined by the Comptroller to take precedence. The Comptroller is not expected to require a state to bring suit to obtain possession or to provide further documentary evidence of entitlement. All claimants, including states, shall be required to comply with regulations consistent with the above." (emphasis added)

Federal legislation intended to promote the return of abandoned property to missing owners should be construed consistently with the Uniform Act and other unclaimed property legislation. Recently another federal act designed to facilitate

the disposition of unclaimed property received judicial consideration. In the case of Travelers Express Co. Inc. v. Minnesota, 506 F.Supp. 1379 (D.Minn. 1981), aff'd, 664 F.2d 691 (8th Cir. 1981), cert. denied, 456 U.S. 920 (1982), the court construed legislation which prescribed the rules by which states could claim unrepresented money orders. The court stated that the federal law was:

"plainly designed to interact with the Uniform Act. It is presumed that a lawmaking body acts with existing law in mind and that new statutes will harmonize rather than conflict with existing statutes." 506 F.Supp. at 1384.

VII

NO STATUTE OF LIMITATIONS BARS THE CLAIMS OF THE MISSING OWNERS

As discussed in Section VI, abandoned property legislation applies to all obligations except those which are time-barred as of the effective date of the law. In the case of the property now in the custody of the Comptroller, no such impediment bars the claim of the missing owners.

The Garn Act, Section 733(a)(1), expressly allows all claimants, including states, a period of twelve months within which to file claims to the property. Thus Congress has expressly established a period of limitations which will not expire until June 30, 1984. In the absence of such a provision the result would be the same. The relationship between that of the bank and the safe deposit box owner is that a bailee and bailor. Cussen v. So. California Savings Bank, 133 Cal. 534, 65 Pac. 1099 ("depository for hire"). See 10 Am.Jur.2d §475. Accordingly, the statute of limitations would not run until the Comptroller denied the bailment and converted the property to his own use, 8 Am.Jur.2d §305. Accord, Memorandum of the Deputy Corporation Counsel, Legal Counsel Division, "Application of the District of Columbia Uniform Disposition of Unclaimed Property Act," dated September 13, 1982 (Exhibit B).

VIII

UPON DELIVERY OF THE PROPERTY TO THE DISTRICT, THE COMPTROLLER IS RELIEVED OF ALL LIABILITY

Section 120(a) of the District Act, D.C. Code, sec. 42-220(a), expressly relieves the Comptroller from all liability for any abandoned property delivered to the state. It states:

Upon the payment or delivery of property to the Mayor, the District government assumes custody and responsibility for the safekeeping of the property. Any person who pays or delivers property to the Mayor in good faith under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim then existing or which may arise thereafter or be made in respect to the property.

IX

CONCLUSION

Based on the provisions of section 115 of the District Act, D.C. Code, sec. 42-215, it is the opinion of the Office of the Corporation Counsel that unclaimed property in the possession of the Comptroller is subject to the claim of the District. Accordingly, such property shall be reported and delivered pursuant to the requirements of sections 117 and 119 of the District Act, D.C. Code, secs. 42-217 and 42-219.

Sincerely,



Inez Smith Reid
Corporation Counsel

Attachments