

INACTIVE DEPOSITORS' ACCOUNTS

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INTRODUCTION

Abandoned property has long been of concern to organized society. Various customs and laws related to abandoned property have been developed over the years but the problem remains unresolved in many respects. In Hawaii approximately a dozen different laws have been enacted concerning abandoned and unclaimed properties.¹ These laws cover such miscellaneous items as goods forgotten on buses and deposits left unclaimed at courts and financial institutions.

Scope of the Study

The First Legislature of the State of Hawaii, Regular Session of 1962, felt that the problems arising from unclaimed moneys left in financial institutions for ten or more years, some of which under present law escheat to the State, merited attention. Through House Resolution 29, H. D. 1, the Legislature requested the Legislative Reference Bureau to conduct a study: (1) of federal laws to determine how Hawaii's escheat statute can be amended to subject national bank accounts to its provisions; (2) to determine the dollar amount of inactive accounts of financial institutions in Hawaii; and (3) to suggest amendments to section 235-11, Revised Laws of Hawaii 1955, whereby its purpose and intent can be best realized.² This report is submitted in conformity with this request.

The Doctrine of Escheat

In feudal England the term "escheat" meant the reversion of land to the original grantor, or lord of the fee, when the tenant of the land left no lawful heirs. In the absence of a lord, or if the lord died without heirs, title to the land reverted to the king who was the ultimate owner of the property. This concept of property reversion has descended to the present day with modifications.

In the United States each state is considered the ultimate owner of all property within its jurisdiction, and unclaimed and abandoned property reverts to the state in which the property is located. Originally escheat applied only to real property but now it generally embraces all types of property including personal. The statutes of a particular state determine the kinds of property that may be subject to escheat.

¹See Appendix A for a list of unclaimed property laws in the Revised Laws of Hawaii 1955.

²See Appendix B for the complete text of H. R. 29, H. D. 1, First State Legislature, Regular Session of 1962.

CHAPTER I

HAWAII'S ESCHEAT LAW REGARDING INACTIVE DEPOSITORS' ACCOUNTS

Hawaii has several statutory provisions regarding escheat of inactive depositors' accounts. The principal section is 235-11 of the Revised Laws of Hawaii 1955 which covers inactive depositors' accounts in such institutions as banks, trust companies, savings and loan associations and certain finance companies. The section reads as follows:

Every bank, except banks organized under the laws of the United States, and every trust company and fiduciary company doing business in the Territory, shall submit, as of July 1 of each even numbered year and on or before July 31 of each such even numbered year, a written report, in sextuplicate, to the territorial treasurer showing all accounts on deposit with it where the present address of the owner thereof is unknown and where no deposits have been made therein and no withdrawals or disbursements have been made therefrom for a period of ten years after the date of the last deposit or withdrawal, giving the names of the last known owners of the accounts and their addresses, and showing the amount standing to the credit of each such person, including principal and interest. The report shall be in such form as the treasurer may require, and he may require that the names of all such last known owners of accounts be listed therein, under any appropriate grouping or classification which the bank, trust company or fiduciary company may choose to make, with the surnames arranged in order alphabetically complete to the first letter of the surnames.

Affected Institutions

There are 26 fiduciary companies which are subject to the provisions of section 235-11, Revised Laws of Hawaii 1955.³

³Section 177-1, RLH 1955, defines a fiduciary company as follows: "The term 'fiduciary company', as used in this part, means and includes every bank, other than a national bank; every trust company; every building and loan association; every industrial loan and investment company which issues or which may hereafter issue or have outstanding any certificate or certificates of indebtedness or investment; every company organized for the purpose of accumulating and loaning the funds of its members or depositors, or which may loan or invest such funds or receive

These 26 include 5 state banks, 11 savings and loan associations, 4 trust companies and 6 finance companies which issue investment certificates to the general public.⁴ Many of these companies have been established within the past few years and therefore do not have inactive accounts of ten or more years duration. But there are about a dozen companies which have been in existence for over a decade and have been making periodic reports of their inactive accounts.

The national banks in Hawaii and many other states have been able to retain their inactive accounts in perpetuity because such institutions have not been subject to state escheat laws. Specifically, national banks in Hawaii are excluded from the State escheat process by the language of section 235-11, Revised Laws of Hawaii 1955. It was evidently the intent of the legislature to refrain from exercising its control over a federal instrumentality. National banks are subject to federal regulations, but escheat which is traditionally considered a state function has been left to the discretion of individual states.

The Handling of Inactive Accounts

According to general banking practices in the United States whenever an account has been inactive for a certain length of time, it is removed from the regular active file and placed under separate control. This practice has been adopted by many institutions as a precautionary measure because inactive accounts are particularly susceptible to embezzlement. Demand deposits (e.g. commercial accounts) are placed under separate controls after an inactivity of approximately six months to a year; and time or non-demand deposits (e.g. savings accounts) are placed under such controls after five or more years. Many mainland firms do not pay any interest on non-demand deposits after they are removed from the active file and subject them to an inactive account fee as well. Most banks in Hawaii have not instituted such a prac-

deposits of money or loan or invest or collect such funds or deposits with interest, or which may repay such depositors with or without interest, or which has the power to invest such funds or deposits in property, securities or other obligations, or which has the power to pay interest or any profit on its general deposits or on its deposits made for a stated period or upon special terms.

The term 'fiduciary company', as used in this section, includes any corporation, association, firm or copartnership that may be carrying on a fiduciary business as above defined but excludes any credit union which lawfully engages only in the business of credit union."

⁴See Table 1 on page 5 for a list of the 26 fiduciary institutions in Hawaii subject to section 235-11, Revised Laws of Hawaii 1955. Also included in the table are the two national banks which are excluded from section 235-11.

tice. Demand deposits, however, are usually subject to an on-going maintenance or service fee ranging from \$.50 to \$1.00 per month. It is therefore possible to have small deposits completely liquidated by collection of these fees with the passage of time.

Most of the inactive accounts are small, frequently in the one to five dollar bracket. Such accounts usually were opened at special events such as bank promotional drives or the birth of a child, and then forgotten. These small accounts can be burdensome to the banks because of high maintenance expenses.

The Escheat Process

The authority to examine inactive accounts in state-chartered banking institutions, while not mandatory, is within the jurisdiction of the bank examiner of the State of Hawaii. The bank examiner has stated that there has been no violation of the escheat requirements in his 15 years of experience and, under such circumstances, detailed examination of inactive accounts had been discontinued during the past several years, due to a shortage of manpower.

Each institution subject to section 235-11, Revised Laws of Hawaii 1955, maintaining deposit accounts which have been inactive for ten or more years, the whereabouts of the owners of which are unknown, is required to submit a written report in each even-numbered year to the director of the budget. The report includes the names of the last known owners of the accounts and their addresses and the amounts standing to the credit of each such person.

The director of the budget next notifies the attorney general who files an information in the court of the First Judicial Circuit setting forth the facts upon which the claim of the State to the escheat of the money represented by such accounts is based.⁵ The clerk of the court then causes a notice to be published directed to all persons claiming any interest in any account mentioned in the information. The notice is required to be published twice in a daily newspaper of general circulation. After the first publication the newspaper copies of the notice are posted in at least two conspicuous places in each judicial circuit in the State. The court next conducts a hearing in which the financial institutions concerned are ordered to remit to the director of the budget all moneys standing to the credit of the accounts. The decree issued by the court releases the respective fiduciary companies from responsibility to the owners or claimants of such moneys. The cost of the proceedings, including advertising, are charged to the accounts, and the net amount remaining in such accounts are deposited with the department of budget and review. Claims to the money may be made within five years. Thereafter all the remaining amounts are escheated to the State. After five years special legislation is required in order to reclaim escheated moneys.

⁵See sections 235-12 and 235-13 of the Revised Laws of Hawaii 1955, as amended.

Table 1

AMOUNT OF INACTIVE DEPOSITS RECEIVED BY THE STATE OF
HAWAII FROM VARIOUS FIDUCIARY INSTITUTIONS
1950-1960

Institutions	1950	1952	1954	1956	1958	1960	Total
STATE BANKS							
American Security Bank	\$ 793	--	--	--	--	\$ 1,262	\$ 2,055
Bank of Hawaii	11,090	\$33,689	\$31,844	\$23,482	\$20,376	12,046	132,527
Central Pacific Bank	--	--	--	--	--	--	--
City Bank of Honolulu	--	--	--	--	--	--	--
Liberty Bank of Honolulu	655	211	140	3,960	3,258	--	8,224
SAVINGS & LOAN ASSOCIATIONS							
American Savings & Loan Association	--	535	2,663	2,096	2,534	2,175	10,003
First Federal Savings & Loan Association of Hawaii	--	--	--	--	--	--	--
Hawaiian Savings & Loan Association	--	--	--	--	--	--	--
Home Savings & Loan Association	155	501	59	59	466	--	1,240
Honolulu Savings & Loan Association, Ltd.	2,494	--	8,272	3,779	8,093	--	22,638
International Savings & Loan Association, Ltd.	--	--	37	95	95	--	227
Pacific Savings & Loan Association	--	--	--	--	--	--	--
Pioneer Savings & Loan Association	--	176	--	104	7	--	287
State Savings & Loan Association	713	1,582	2,365	354	1,904	2,418	9,336
Territorial Savings & Loan Association	74	138	160	622	320	161	1,475

Table 1 (continued)

Institutions	1950	1952	1954	1956	1958	1960	Total
Island Federal Savings & Loan Association	--	--	--	--	--	--	--
Oahu Savings & Loan (Merged with Honolulu Savings & Loan on 8-31-59)	\$ 1,428	\$ 494	\$ 429	\$ 6	\$ 14	--	\$ 2,371
TRUST COMPANIES							
Bishop Trust Company, Ltd.	--	--	529	--	295	--	824
Cooke Trust Company, Ltd.	--	--	--	--	--	--	--
Hawaiian Trust Company, Ltd.	--	--	--	--	--	--	--
Honolulu Trust Company, Ltd.	--	--	--	--	--	--	--
FINANCE COMPANIES							
Finance Factors, Ltd.	--	--	--	--	--	--	--
Hawaii Thrift and Loan, Inc.	--	--	--	--	--	--	--
Ideal Finance and Mortgage	--	--	--	--	--	--	--
Manoa Finance Company, Ltd.	--	--	--	--	--	--	--
Muraoka Finance Company, Ltd.	--	--	--	--	--	--	--
Oahu Finance Company, Ltd.	--	--	--	--	--	--	--
TOTAL	\$17,402	\$37,326	\$46,498	\$34,557	\$37,362	\$18,062	\$191,207
Less Refund to Claimants	1,517	2,073	1,019	2,527	1,288	216	8,640
NET TOTAL	\$15,885	\$35,253	\$45,479	\$32,030	\$36,074	\$17,846	\$182,567

Source: Department of Accounting and General Services, State of Hawaii.

Note: The amounts listed are the net total after initial refunds have been made to the claimants at the court proceedings.

Amount Escheated to the State: 1950-1960

A total of \$182,567 was escheated to the State during the period 1950 through 1960 inclusive as indicated in Table 1. From this sum amounts totalling approximately 16 per cent were allowed for expenses connected with the legal proceedings and publications of names in the newspapers. No allowance was made for personnel service and other expenses incurred by the courts, and the departments of treasury and regulation, budget and review, and accounting and general services.

Table 2 shows that the total number of inactive accounts as of July 1, 1962 was 4,483 and the total amount of inactive deposits was \$147,607 or an average of \$32.95 in each inactive account. To obtain this data, questionnaires were sent to the 26 institutions subject to the escheat law and also to the two national banks.⁶ The replies received are incorporated into Table 2 which lists the total number and amount of inactive accounts in these institutions as of July 1, 1962. No publication of the 1962 escheat list of inactive deposit accounts has been made to date; therefore the above figures are subject to change after claims for refund are made. In the past many of the larger accounts have been reclaimed after publication; it is therefore very likely that the inactive accounts reported above may be reduced by as much as 25 per cent.

⁶See Appendix C for a sample form of the questionnaire sent to the various fiduciary institutions.

Table 2

NUMBER AND AMOUNT OF INACTIVE DEPOSITS TO BE ESCHEATED TO
THE STATE OF HAWAII BY VARIOUS FIDUCIARY INSTITUTIONS
AS OF JULY 1, 1962

Institutions	Date Chartered	Number of Inactive Accounts	Amount of Inactive Deposits
BANKS			
State:			
American Security Bank	March 1, 1935	184	\$ 3,817
Bank of Hawaii	Dec. 11, 1897	829	23,368
Central Pacific Bank	Jan. 15, 1954	--	--
City Bank of Honolulu	Jan. 8, 1959	--	--
Liberty Bank of Honolulu	Dec. 18, 1922	620	7,371
National:			
First National Bank of Hawaii	Aug. 1858	573*	84,200*
Hawaii National Bank	Sept. 19, 1960	--	--
SAVINGS & LOAN ASSOCIATIONS			
American Savings & Loan Association	April 23, 1923	1,022	10,370
First Federal Savings & Loan Association of Hawaii	July 29, 1904	56	2,139
Hawaiian Savings & Loan Association	April 1, 1957	--	--
Home Savings & Loan Association	Feb. 12, 1936	8	418
Honolulu Savings & Loan Association, Ltd.	Aug. 6, 1929	834	5,360
International Savings & Loan Association, Ltd.	Jan. 6, 1925	38	2,209
Island Federal Savings & Loan Association	May 14, 1962	--	--
Pacific Savings & Loan Association	Sept. 30, 1955	--	--

Table 2 (continued)

Institutions	Date Chartered	Number of Inactive Accounts	Amount of Inactive Deposits
Pioneer Savings & Loan Association	June 12, 1890	18	\$ 102
State Savings & Loan Association	March 19, 1919	215	7,667
Territorial Savings & Loan Association	March 1, 1921	86	586
TRUST COMPANIES			
Bishop Trust Company, Ltd.	Jan. 6, 1906	--	--
Cooke Trust Company, Ltd.	Jan. 2, 1932	--	--
Hawaiian Trust Company, Ltd.	Aug. 10, 1898	--	--
Honolulu Trust Company, Ltd.	Aug. 16, 1921	--	--
FINANCE COMPANIES			
Finance Factors, Ltd.	April 18, 1952	--	--
Hawaii Thrift and Loan, Inc. (formerly Honolulu Credit & Finance Ltd.)	July 10, 1952	--	--
Ideal Finance and Mortgage	Dec. 22, 1926	--	--
Manoa Finance Company, Ltd.	Sept. 26, 1960	--	--
Muraoka Finance Company, Ltd.	March 25, 1952	--	--
Oahu Finance Company, Ltd.	Aug. 1, 1953	--	--
TOTAL		4,483	\$147,607

*These figures are estimates. There were 1,636 inactive accounts at the First National Bank of Hawaii with a total of \$240,572. However, the whereabouts of some of the owners of these accounts is known to the bank. A random sample indicated that only about 35 per cent of these accounts were actually inactive with the present addresses of the owners unknown. The figures in the table represent these 35 per cent.

CHAPTER II

LEGAL ASPECTS OF ESCHEAT OF INACTIVE DEPOSITORS' ACCOUNTS

Many states have enacted statutes which provide for the escheat of deposits based upon the number of years the deposits have been unclaimed. Such statutes as applied exclusively to state banks have been held constitutional.⁷ The prevailing opinion of the courts, as delineated in First National Bank of San Jose v. California, however, is that state laws on escheat of unclaimed bank deposits cannot be applied to national banks if they are based merely upon dormancy for a prescribed period without any determination of abandonment in fact.⁸ The failure of such laws to require proof of abandonment of the deposit was said to constitute a confiscation of depositors' accounts, impair the efficiency and deny the national banks its privileges as a federal instrumentality. In a subsequent decision, Andersen National Bank v. Luckett, 321 U. S. 233, 88 L. Ed. 692, 64 S. Ct. 599, 151 A.L.R. 824 (1944), the United States Supreme Court recognized the right of a state to obtain dormant deposits in a national bank through escheat based upon a statutory presumption of abandonment if the account was inactive for a certain number of years and the statute afforded due process of law. The decision was based upon the relevant sections of chapter 393 of the Kentucky Revised Statutes (1942).⁹

⁷Security Sav. Bank v. California, 263 U. S. 282, 68 L. Ed. 301, 31 A.L.R. 391 (1923); Provident Inst. v. Malone, 221 U. S. 660, 55 L. Ed. 899, 31 S. Ct. 661, 34 L.R.A. (N.S.) 1129 (1911).

⁸The U. S. Supreme Court in First National Bank of San Jose v. California, 262 U. S. 366, 67 L. Ed. 1030, 43 S. Ct. 602 (1923), ruled as unconstitutional the then sec. 1273 of the California Code of Civil Procedure which read as follows: "All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state."

⁹See Appendix D for the relevant sections of chapter 393 of the Kentucky Revised Statutes (1942).

Comparison of Hawaii and Kentucky Escheat Statutes

Hawaii's escheat statute with respect to inactive accounts in financial institutions contains requirements substantially similar to the requirements of the Kentucky statute which was declared constitutional in Andersen National Bank v. Lockett, supra, with one major exception, that of the statutory presumption of abandonment. A comparison of the two state statutes will be made in order to analyze the sufficiency or shortcomings of the escheat provisions of Hawaii.

(1) Question of Abandonment. Sec. 235-11, Revised Laws of Hawaii 1955, requires inactivity for a specified period before the financial institutions are to report inactive deposits, both demand and non-demand, to the State. The Kentucky statute also includes inactivity for a certain length of time, but in addition Kentucky specifies a statutory presumption of abandonment which is not contained in the Hawaii statutes. The United States Supreme Court in First National Bank of San Jose v. California, supra, declared that the California statute was unconstitutional since it determined escheat solely on the basis of inactivity for a certain number of years where neither the depositor nor any claimant had filed notice with the bank showing his present address.¹⁰ Hawaii's statute as applied to national banks would be subject to the same infirmity as the former California statute since in Hawaii escheat is primarily based upon inactivity rather than presumed abandonment. On the other hand, the United States Supreme Court in passing upon the Kentucky statute in Andersen National Bank v. Lockett, supra, declared that if a state statute

¹⁰In Andersen National Bank v. Lockett, supra, the United States Supreme Court stated: "The decision of this Court in First National Bank v. California, supra, did not rest on any want of power of a state to demand of a national bank, payment of deposits which the state was lawfully entitled to receive. Decision there turned rather on the effect of the state statute in altering the contracts of deposit in a manner considered so unusual and so harsh in its application to depositors as to deter them from placing or keeping their funds in national banks. In that case the state brought a statutory proceeding in its courts to compel a national bank to pay over to it an inactive deposit account. The statute required 'escheat to the state' of all balances in deposit accounts remaining unclaimed and inactive for more than twenty years, where neither the depositor nor any claimant had filed any notice with the bank showing his present address. It authorized suit in behalf of the state to recover such amounts and directed that judgment should be given for the state 'if it be determined that the moneys deposited in any defendant bank or banks are unclaimed', for the period and in the manner specified by the statute. It will be noted that the statute required no proof that the forfeited accounts had been in fact abandoned, or that their owners were unknown or had died without heirs or surviving kin. Upon mere proof of dormancy for the prescribed period, the statute declared the accounts to be escheated to the state".

required that such accounts be escheated only after such accounts have been determined to be abandoned, then such a statutory provision would not be unconstitutional.

If national banks are to be included within the escheat laws of Hawaii, it appears necessary that amendments be made to indicate that the dormant or inactive accounts be in fact abandoned or that there be a statutory presumption of abandonment.

(2) Knowledge of Owners' Present Addresses. Hawaii's statutes (sec. 235-11) require that financial institutions have no knowledge of the present address of the owners of the inactive accounts at the time such accounts are declared inactive and reported to the State. If the present addresses of the owners of the inactive accounts are known, such accounts need not be reported. Kentucky's provisions are similar but include important procedural variations. In Kentucky the accounts presumed abandoned (secs. 393.060 and 393.070) because of inactivity are first reported to the State (sec. 393.110). Such report must include the name of the owner and the last known address, among other information. However, there is a four month period before the reported property is actually turned over to the state department of revenue, during which time any person may present competent evidence that the person entitled to the property has transacted business within the four months to show that the person entitled to the estate or property has knowledge of it and still claims his legal or equitable right to it, or by other competent evidence clearly indicates such knowledge or claim. No property need be surrendered if the evidence presented is competent. Thus, both Hawaii and Kentucky offer an additional protection to the dormant accounts. However, the question remains as to whether Hawaii's statute is adequate for the determination of abandonment if national banks are to be included within the statute.

(3) Publication of Notice. Hawaii's statute (sec. 235-12) requires the publishing of a notice listing the inactive accounts "twice in a daily newspaper of general circulation, published in Honolulu, the second publication to be not less than sixty days after the first and not less than one month prior to the date fixed for the hearing of the information". The United States Supreme Court in the Andersen case stated that the Kentucky requirement, that the list of inactive accounts be posted for a period of six weeks on the courthouse door or the courthouse bulletin board in conjunction with the notice provided by the statute itself, was sufficient notice to satisfy the due process provision of the United States Constitution. Hawaii's statutes would seem to meet the constitutional requirements of due process in this respect. No personal notice is believed to be necessary since the addresses of the owners are unknown.

(4) Right to Recover Deposit. Hawaii's statute (sec. 235-13) provides for the State to have custody of the inactive accounts for five years after the court hears, determines the issues, and makes an appropriate decree, and after the director of the budget demands and receives the moneys from the various financial institutions. A bona fide claimant is able to recover his deposit which was deemed abandoned at any time within the five years. If no claims are received, the abandoned deposits are thereafter escheated to the State. The Kentucky statute

(sec. 393.140) is similar and allows a bona fide claimant to recover his deposit deemed abandoned five years after judicial decree of actual abandonment. All unclaimed deposits are thereafter escheated to the State. Thus Hawaii's provisions on the judicial determination of abandonment seem to provide adequate safeguards of due process.

From the comparison above it can be concluded that the requirements of the existing Hawaii statute on escheat of inactive accounts are substantially similar to the Kentucky statute which was declared constitutional, with the important exception that the Hawaii Statute does not provide for a statutory presumption of abandonment. It would appear that the existing Hawaii statute would not meet the constitutional requirement in this respect if national banks were to be included within the escheat provisions. Amendment seems necessary to change the criterion based on mere inactivity to one based on abandonment presumed from extensive inactivity.

The Uniform Disposition of Unclaimed Property Act

Many states have adopted the Uniform Disposition of Unclaimed Property Act, which was proposed by the National Conference of Commissioners on Uniform State Laws in 1954, in order to resolve "escheat" problems. The adopting states include Arizona, California, Florida, Idaho, New Mexico, Oregon, Utah, Virginia, and Washington.¹¹

The Uniform Act covers many types of abandoned property including inactive accounts held by banking and other financial institutions, funds held by life insurance companies, deposits and refunds held by public utilities, and property held by state courts and other public agencies. Under the Act, the custodianship of unclaimed property is transferred by the holder to the state upon presumption of abandonment. The owner's right to the property is not lost since the state takes custody of the unclaimed property and assumes custodial responsibility in perpetuity. In this regard the National Conference of Commissioners on Uniform State Laws stated:

The Uniform Act is custodial in nature, - - that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of his presenting a claim in the distant future is not great, the owner retains his right of presenting his claim at any time no matter how remote. State records will have to be kept on a permanent basis. In this respect the measure differs from the escheat type of statute, pursuant to which

¹¹Wisconsin Legislative Council, Staff Report to the Judiciary Committee on the Uniform Disposition of Unclaimed Property Act (Research Publication SR 63-1, January 1962), p. 4.

the right of the owner is foreclosed and the title to the property passes to the state. Not only does the custodial type of statute more adequately preserve the owner's interests, but, in addition, it makes possible a substantial simplification of procedure.¹²

Another important feature of the Uniform Act, not included in the present Hawaii statute, is the protection of holders of unclaimed property from the possibility of multiple liability when two or more states have an interest in the unclaimed property. In Connecticut Mutual Insurance Co. v. Moore, 333 U. S. 541, 92 L. Ed. 863 (1947), the United States Supreme Court held that the State of New York may take possession of unclaimed funds due on insurance policies issued to persons in the State of New York, even though the insurance company, the holder of the funds, is domiciled in another state. But in Standard Oil Co. v. New Jersey, 341 U. S. 428, 95 L. Ed. 1078 (1951), the court based jurisdiction on the domicile of the holder of the unclaimed property. The Uniform Act attempts to prevent such divergent points of view and provides for reciprocity among states. According to the Uniform Act only a single state has the jurisdictional right to the property and the last known address of the owner is made the determining factor. The divergent viewpoints cited above could be avoided by the inclusion of this feature in the statutes.

Some of the proponents of the Uniform Act in other states have claimed that such an act is a "treasure trove" which will provide a state with a continuing source of revenue and correspondingly relieve the need for additional public funds from tax sources.¹³ A few of the more populated states have gained a significant amount of revenue, but a state such as South Dakota, after an extensive study of the Act, estimated that only about \$30,000 would revert to the state annually after an income of \$253,000 the first year based upon state custody of property unclaimed for 20 years.¹⁴ No study of the various kinds of abandoned or unclaimed property in Hawaii has been made, but it is probable that Hawaii's revenues would not be much greater than those of South Dakota if it were to adopt the Uniform Act.

¹²National Conference of Commissioners on Uniform State Laws, Uniform Disposition of Unclaimed Property Act (August 9-14, 1954), p. 4.

¹³Joint Committee of the Florida Legislature, Abandoned Property--State Acquisition and Recovery by the Rightful Owner (April 4, 1961), p. 3.

¹⁴State Legislative Research Council, Background and Proposed Methodology Study of Escheat Laws and a Uniform Unclaimed Property Act in South Dakota (Pierre, South Dakota, September 21, 1961), p. 15.

The cost of administration of the Uniform Act varies from state to state. According to the South Dakota study the State of Washington reported that its administrative costs were approximately \$16,000 and Arizona estimated its costs as \$27,000. It will cost South Dakota about \$23,000 the first year and \$17,000 the second year.

As a general rule the administrative costs are high during the first year. The costs become less in the succeeding years but revenues also decline.

Alternative Approaches for Hawaii

The legislature may wish to consider the following alternative courses regarding the problem of escheat of inactive deposit accounts:

(1) Retain the existing statutes in their present form. There is no doubt that a state has an inherent right to the escheat of inactive deposit accounts under procedures satisfying constitutional requirements. The national banks would continue to be excluded from coverage under this first course of action.

(2) Retain the existing statutes essentially in their present form but amend them so as to include the national banks under section 235-11, Revised Laws of Hawaii 1955, and to provide for a statutory presumption of abandonment. The inclusion of national banks would appear to be possible without unconstitutional infringement upon a federal instrumentality if the statutory provision is changed from one based upon inactivity to one based on presumed abandonment. The United States Supreme Court, in Andersen National Bank v. Lockett, *supra*, a case in which the Kentucky statute was declared to be constitutional, stated: "This Court has often pointed out that national banks are subject to state laws unless those laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions".

(3) Completely revise the various existing escheat provisions by adopting the Uniform Disposition of Unclaimed Property Act. This Act is based upon the principle of custody rather than escheat of dormant accounts and serious questions regarding confiscation of property by the State are thus eliminated. The consideration of this Uniform Act by the legislature may be preceded by an examination of the various types of unclaimed properties in Hawaii, the effect of the Act on such properties, and the experiences of other states under the Uniform Act.

APPENDIX A

STATUTES RELATING TO UNCLAIMED PROPERTY STATE OF HAWAII

Section Number, Revised Laws of Hawaii	Subject Matter of Statute	Receiver of Un- claimed Property	Period of Dormancy
128-46	Unclaimed tax sale surplus (real property lien foreclosure)	State	10 yrs.
160-91.1	Unclaimed security deposit of uninsured drivers of motor vehicles	County	3 yrs.
178-149	Unclaimed deposits or balances upon liquidation of a bank	State	5 yrs.
193-6	Unclaimed proceeds from sale of goods held by common carriers	State	5 yrs.
193-11	Unclaimed proceeds from sale of baggage and other property held by hotel-keeper's lien	State	60 days
193-18	Unclaimed proceeds of sale of items held by laundry and cleaner's lien	State	30 days
235-1	Proceeds from unclaimed real property	State	15 yrs.
235-10	Unclaimed money deposited with clerks of courts	State or County	7 yrs.
235-11	Unclaimed deposits in banks, trust, and fiduciary companies	State	10 yrs.
235-14	Unclaimed moneys held by trustees of dissolved corporations	State	2 yrs.

APPENDIX A (continued)

Section Number, Revised Laws of Hawaii	Subject Matter of Statute	Receiver of Un- claimed Property	Period of Dormancy
235-15	Unclaimed dividends of corporations	State	5 yrs.
235-21	Corporate stock issued by Hawaiian corporation where owner is unknown	State	14 yrs.
317-32	Proceeds of unclaimed personalty where there are no heirs or legatees	State	none
317-33	Unclaimed stocks, bonds, or money where distributee, legatee, heir or beneficiary cannot be found	State	7 yrs.
317-41, 43, 44	Unclaimed proceeds of property belonging to deceased Hansen's Disease patients	State	6 mos.
317-56	Unclaimed balances of certain unadministered small estates not exceeding \$1,500	State	1 yr.
317-59	Unclaimed balances of certain unadministered small estates not exceeding \$300	State	60 days
318-14	Intestate estate with no kindred	State	none
318-15	Intestate with kuleana in land and no kindred	Owner of Ahupuaa, etc.	none

Source: Revised Laws of Hawaii 1955, as amended.

APPENDIX B

(To be made one and eight copies)

FIRST LEGISLATURE, 1962
STATE OF HAWAII

H.R.NO. 29
H. D. 1

C HOUSE RESOLUTION
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Y

1 WHEREAS, section 235-11, Revised Laws of Hawaii 1955,
2 provides that banks, trust companies and fiduciary companies
3 doing business in the State shall submit a report to the State
4 Treasurer listing depositors' accounts where the owners'
5 present addresses are unknown and where no deposits, with-
6 draws or disbursements have been made for a period of ten
7 years; and

8
9 WHEREAS, bank officials have stated that they have been
10 making every effort to reactivate and to locate the owners of
11 savings accounts which have been inactive for five years or
12 more, since they wish to retain the good will of such deposi-
13 tors; and

14
15 WHEREAS, it appears that to prevent pilfering and other
16 wrongdoing by employees, banks remove from their active
17 records all accounts which are inactive for five years or more
18 and exercise close surveillance over same; and

19
20 WHEREAS, however, the State Treasurer has stated that his
21 bank examiners have been merely accepting escheat lists as
22 submitted by banks without auditing bank records to substan-
23 tiate the accuracy of such lists; and

24
25 WHEREAS, it has been called to the attention of members
26 of the House of Representatives that certain financial insti-
27 tutions may be knowingly retaining inactive accounts, which
28 may total a sizable amount, under the guise that the present
29 addresses of the owners are known to them; and

30
31

1 WHEREAS, this matter is of serious concern to the members
2 of the House of Representatives since any such action by finan-
3 cial institutions would not only be an attempt to circumvent
4 legal requirements, but also would deny the State revenues
5 which rightfully belong to the State through the process of
6 escheat; and

7
8 WHEREAS, accounts of national banks are not subject to
9 Hawaii's escheat statute; now, therefore,

10
11 BE IT RESOLVED by the House of Representatives of the
12 First Legislature of the State of Hawaii, Budget Session of
13 1962, that the Legislative Reference Bureau be and is hereby
14 requested to conduct a study:

15
16 (1) of federal laws to determine how Hawaii's escheat
17 statute can be amended to subject national bank accounts to
18 its provisions;

19
20 (2) to determine the dollar amount of inactive accounts
21 of financial institutions in Hawaii; and

22
23 (3) to suggest amendments to section 235-11, Revised Laws
24 of Hawaii 1955, whereby its purpose and intent can be best
25 realized;

26
27 and to report its findings to the Second State Legislature,
28 General Session of 1963; and

29
30 BE IT FURTHER RESOLVED that a certified copy of this
31 resolution be sent to the Legislative Reference Bureau.

APPENDIX C

QUESTIONNAIRE ON INACTIVE DEPOSITORS' ACCOUNTS

- (1) Name of institution: _____
- (2) Date institution was chartered: _____
- (3) Do you have any inactive depositors' accounts 10 years or more of age as of July 1, 1962?
Yes _____ No _____
- (4) If your reply to the above question is yes, please complete the following:
- a. Total amount of inactive depositors' accounts on hand as of July 1, 1962: \$ _____
- b. Total number of inactive depositors' accounts on hand as of July 1, 1962: _____
- (5) Inactive depositors' accounts previously reported to the State:

<u>Year</u>	<u>Total Amount of Inactive Accounts</u>	<u>Total Number of Inactive Accounts</u>
1944	\$ _____	_____
1946	_____	_____
1948	_____	_____
1950	_____	_____
1952	_____	_____
1954	_____	_____
1956	_____	_____
1958	_____	_____
1960	_____	_____
1962	_____	_____

APPENDIX D

SELECTED SECTIONS OF CHAPTER 393 OF THE KENTUCKY REVISED STATUTES (1942) DEALING WITH INACTIVE DEPOSIT ACCOUNTS

393.060 Deposits in bank or trust company payable on demand; when presumed abandoned. Any deposit (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

- (1) Negotiated in writing with the bank or trust company concerning it;
- (2) Been credited with interest on the passbook or certificate of deposit on his request;
- (3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or
- (4) Increased or decreased the amount of the deposit.

393.070 Deposits not payable on demand; when presumed abandoned. Any deposit (legal, beneficial, equitable or otherwise) other than those payable on demand in any bank or company in this state, together with the interest thereon, shall be presumed abandoned unless the owner has, within twenty-five successive years next preceding the date as of which reports are required by KRS 393.110:

- (1) Negotiated in writing with the bank or trust company concerning it;
- (2) Been credited with interest on the passbook or certificate of deposit on his request;
- (3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or
- (4) Increased or decreased the amount of the deposit.

393.110 Holders of abandoned property to report to department; claim of right. (1) Any person or court of this state, or its agent, holding any property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver or in any other capacity coming within the purview of KRS 393.060 to 393.100 shall report annually to the department as of July 1, all property held by it declared by this chapter to be presumed

abandoned. The report shall be filed in the offices of the department in Frankfort by September 1 for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and any other information required by the department for the administration of this chapter.

(2) Such person or court shall, unless excused by subsection (3), within four months after July 1, turn over to the department all property so reported.

(3) If any person proves, by competent evidence on hearing before the commissioner, that the person entitled to the property has within the four months transacted business resulting in writing of record in the books of the person or court making the report, which transaction shows that the person entitled to the estate or property has knowledge of it and still claims his legal or equitable right to it, or has by other competent evidence clearly manifested such knowledge or claim, the person or court making the report or in possession of the property shall not be required to surrender it to the department.

393.140 Claim of interest in property surrendered to state.

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five years after the judgment, file his claim to it with the department.

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) The claimant shall, within fifteen days after filing any claim permitted under this section, publish notice of the claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the state. If there is no such newspaper, the claimant shall post the notice at the courthouse door and in three other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No such claim shall be allowed until fifteen days after proof of the notice is received by the department at its offices in Frankfort.