

MAINE STATE LEGISLATURE

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May 20, 1942

To the State Auditor
Re: Unclaimed Funds in Closed Banks

I have your memorandum and also schedules showing sums of money in the State Treasury under the listing of RECEIVERS' FUNDS FOR DEFUNCT BANKS.

R. S. Chapter 57, Section 53, is not very clearly worded. The section uses the following language:

"When it appears upon the settlement of the account of the receiver of such an institution that there is remaining in his hands funds due depositors who cannot be found and whose heirs or legal representatives are unknown, the court may order such unclaimed funds to be paid into the state treasury, together with a statement giving the names of such depositors and the amount due each, the same to be held subject for twenty years thereafter to be paid to the person or persons having established a lawful right thereto when made to appear upon proper proceedings instituted in the court ordering such disposition of such unclaimed funds; . . . "

The above language has been generally construed as having the following meaning. When the owner or owners of the money cannot be located and the court which is handling the liquidation of the bank is fully satisfied that every practicable means of locating said owners has been used, title to the moneys shall vest in the State, subject, however, to being divested if the person or representatives of the person who, before the date of the Court Order, was entitled to the funds, comes into the same court that issued the Order and shows that he is that person, and that he has that right. Under such circumstances, the court by proper Order, directed to the treasurer of state, may require said moneys to be paid over to the person so identified.

If the amount is less than \$200. the Order need not be issued by the same court that issued the original decree.

My answer, then, to your question Number 1, is that the State is not only justified in taking over in its own right the sum of \$10,759.03, balance held by the state for over twenty years, but that title to said money is now absolute in the State.

Your second question asks under what statutory authority, if any, the balances in liquidated trust companies have been transferred to the state since the statute apparently applies only to savings banks. The answer to this lies in the conduct of the courts acting under their interpretation of the meaning of the law. It is

true that the revisor of statutes. in drafting Section 52 of Chapter 57, used in the first line the word "such", apparently referring to savings banks, and it may be that the same language was inadvertently used in previous statutes. The courts, in dealing with this, have apparently proceeded on the theory that the legislature could not have intended to limit the process of orderly liquidation to savings banks. The courts have, therefore, as far as my information goes, applied the provisions of Section 52 to trust companies as well as to savings banks, and if Section 52 is applied to trust companies, Section 43, which provides a method of carrying out some of the provisions of Section 52, should also apply to trust companies. . . I believe the Revision Committee is now trying to clarify the language. . .

I have given above my understanding of the way the courts hold when these cases come before them. The whole question is more properly a matter for the courts as it involves private litigation. The State is secondarily interested. The rights of missing heirs are jealously protected by the courts and by the legislature. Even the twenty-year statute that I have referred to above would probably be held by the courts as subject to disability statutes, and disability statutes have been held to apply even after a period of a century if the disabilities were of such a nature that there was no break in the continuance of their application.

Frank I. Cowan
Attorney General

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