



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

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Subject: State Unclaimed Property and Escheat Statutes

Dear Mr. Berry and Ms. Chapman:

Thank you for your letter of July 12, 2004, on behalf of the National Association of State Treasurers (NAST) and the National Association of Unclaimed Property Administrators (NAUPA), which requests clarification of certain provisions relating to state unclaimed property and escheat laws contained in the OCC's recently promulgated preemption and visitorial powers regulations.¹ As discussed below, the new rules do not change the existing standards, established by U.S. Supreme Court precedent and federal statute, that govern the applicability and enforcement of state unclaimed property and escheat laws.

Discussion

The preemption rule permits a national bank to exercise its deposit-taking powers without regard to state-law limitations concerning abandoned and dormant accounts, but qualifies that authority by referencing the types of laws in this area that the Supreme Court held not to be preempted. The rule clarifies that preemption:

¹ 69 Fed. Reg. 1904 (Jan. 13, 2004) (preemption regulation) and 69 Fed. Reg. 1895 (Jan. 13, 2004) (visitorial powers regulation).

does not apply to state laws of the type upheld by the United States Supreme Court in *Anderson Nat'l Bank v. Lueckett*, 321 U.S. 233 (1944), which obligate a national bank to 'pay [deposits] to the persons entitled to demand payment according to the law of the state where it does business.' *Id.* at 248-249.

These provisions reflect – and preserve – the law governing the applicability to national banks of state escheat and unclaimed property law as articulated by the Supreme Court in the *Anderson National Bank* case. In *Anderson National Bank*, the Supreme Court upheld the applicability to national banks of a Kentucky statute that established a "comprehensive scheme for the administration of abandoned bank deposits."²

However, the Supreme Court also expressly declined to revisit or overrule an earlier case, *First National Bank of San Jose v. California*,³ in which it had held that a state abandoned property statute was preempted by the national banking laws. The California statute considered in *FNB San Jose* provided for automatic forfeiture to the state of accounts that had been dormant for a specified period of time. The Court said that this state statute qualified contracts between a national bank and its depositors "in an unusual way" that amounted to a dissolution of the deposit contract between the national bank and its accountholder. For that reason, the California statute impaired national banks' efficiency in exercising their federally authorized power to accept deposits.⁴

The conclusions indicated by the Supreme Court's decisions in the *FNB San Jose* and *Anderson* cases are preserved by the preemption rule, and the OCC would apply those standards to any preemption questions on this topic that might arise.

Your inquiry also raises questions concerning the ability of states to examine certain records of national banks. In this regard, 12 U.S.C. § 484 provides:

No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.⁵

The statute goes on to provide that:

[L]awfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance

² *Anderson National Bank*, 321 U.S. at 238.

³ 262 U.S. 366 (1923) (*FNB San Jose*).

⁴ *Id.* at 369-70.

⁵ 12 U.S.C. § 484(a).

with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.⁶

States' authority to review national banks' records to ensure compliance with state unclaimed property or escheat laws is governed by this statute and is not affected by the visitorial powers rulemaking.

I trust these answers are responsive to your concerns.

Sincerely,

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

⁶ *Id.* at § 484(b).