

## Opinion No. 59-183

November 4, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Joe Callaway State Treasurer Santa Fe, New Mexico

{\*285} This is in response to your request for an opinion on the following question:

"Is the Unclaimed Property Act constitutional as it applies to National Banks, State Banks and other Federally Authorized Agencies?"

Answer: Yes

The status of National Banks is outlined in the case of **Bank of America, National Trust & Savings Association v. Lima**, 103 F Supp 916, USDC, District of Massachusetts, March 21, 1952, where it is stated as follows:

"National banks are creatures of the Federal government. National banks are brought into existence under Federal legislation, are instrumentalities of the Federal government and are necessarily subject to the paramount authority of the United States. **Nevertheless, national banks are subject to the laws of a state in respect of their affairs, unless such laws interfere with the purposes of their creation,** tend to impair or destroy their efficiency as Federal agencies, or conflict with the paramount law of the United States." *First National Bank in St. Louis v. State of Missouri*, 263 U.S. 640, 44 S. Ct. 213, 215 L. Ed. 486. (Emphasis Supplied)

Thus it can be seen that the State may enact legislation effecting national banks even though they are Federal agencies unless such legislation is in conflict with the purposes of such banks. That the Unclaimed Property Act does not so interfere is supported by ample authority in law.

**Anderson National Bank v. Lockett**, 321 U.S. 233, involved the Unclaimed Property law of Kentucky which required every bank or trust company in the State to turn over to the State, deposits which remained inactive and unclaimed for specific periods. The question was raised in that case of whether the statute, as applied to deposits in a national bank, conflicts with the national banking laws or is an unconstitutional interference by the State with the national bank's operations as a banking instrumentality of the United States. It was held that the statute was constitutional and valid. The Court said:

"True, under the Kentucky statute, as in the case of an attachment or the administration of the estate of a deceased depositor, a change in the dominion over the accounts will ensue, to which the bank must respond in payment of them on lawful demand. But this, as we have said, is nothing more than performance of a duty by the bank imposed by

the Federal banking laws, and not a denial of its privileges as a Federal instrumentality. In all this we can perceive no denial of constitutional right and no unlawful encroachment on the rights and privileges of national banks.

Since Kentucky may enforce its statute requiring the surrender to it of presumptively abandoned accounts in national banks as well as state banks, it may, as an appropriate {\*286} incident to this exercise of authority, require the banks to file reports of inactive accounts as the statute directs. . . ."

The question regarding disposition of abandoned or unclaimed bank deposits is annotated in 151 ALR 836. The validity of statutes effecting these accounts as applied to national banks is also discussed. Suffice it to say that the validity of such statutes is upheld in cases where, as under our current law, sufficient notice and protection is given to the depositor, if known and if alive, to reclaim his property. See also, **Helvey v. Security First National Bank of Los Angeles**, 221 P. 2d 257, (a case involving California's Abandoned Property Act).

It is the opinion of this office that the New Mexico Unclaimed Property Act is constitutional and applies to national banks as well as State banks.

B. J. Baggett

Assistant Attorney General