

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ADMIN 1220 (Rev. 8/78)

OUR FILE NO. 463

DEPARTMENT Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : Thomas Fraser
Special Assistant
Attorney General

DATE: September 25, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved - State Treasurer's Office - Unclaimed Property Governing the Minnesota Unclaimed Property Act

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

cc: Duane Harves

#463 State Treas. - Unclaimed Property

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9/5 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 9/25

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

State of Minnesota

Jim Lord
Treasurer

State Executive Council
State Board of Investment
Treasurer Metropolitan Airports Commission

September 1, 1978

Lee E. Sheehy
Special Assistant Attorney General
G-19K Administration Building
St. Paul, Minnesota 55155

RE: IN THE MATTER OF THE PROPOSED RULES GOVERNING THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Dear Mr. Sheehy:

Pursuant to Minn. Stat. §15.0412, subd. 4 (SUPP. 1977), enclosed for review by the Attorney General is the complete hearing record in the above-entitled matter, including the Findings and Order Adopting Rules, the Rules as Adopted, and the Report of the Chief Hearing Examiner dated August 31, 1978.

A copy of this letter has been sent to all those persons who requested notification of the submission of the hearing record to the Attorney General.

Sincerely,

Jim Lord
State Treasurer

JL:mr

Enclosures

Room 303 - State Administration Building Saint Paul, Minnesota 55155 (612) 296-7091

RULES ADOPTED BY THE STATE TREASURER*

TRE 1 Purpose. The rules and regulations contained in this subchapter are for the purpose of implementing provisions of the Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§345.31 - 345.60, as amended.

TRE 2 Service Charges. The term "service charges" means any type of ~~charge deducted~~ deduction by a holder (as defined in Minn. Stat. §345.31 subd. 5) from property presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, and also shall include: ~~charges deducted by a holder from property not yet presumed abandoned, which charges are made by reason of the inactivity, dormancy, or abandonment of property, including such charges as service charges, handling charges, and administrative costs.~~

A. For the types of property described in Minn. Stat. §§345.32, 345.33, 345.35 and 345.37, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason of the non-occurrence of the events or acts that prevent the presumption of abandonment as described in those sections, or by reason of the inactivity, dormancy, or unclaimed status of the property; and

B. For the types of property described in Minn. Stat. §§345.34, 345.36, 345.38 and 345.39, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason of the inactivity, dormancy, or unclaimed status of the property.

TRE 3 - 8 Reserved for Future Use.

TRE 9 Report ~~Substantiation~~ of ~~deductions~~ service charges. If service charges ~~are~~ have been deducted ~~from property~~, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. The citation of the authority ~~statute~~ or a copy of the form of contract authorizing such service charges~~.~~;

B. The value or amount of each item of property, before any service charges ~~are~~ were deducted therefrom~~.~~;

C. The amount of service charges deducted from each item and the date or dates on which such service charges were deducted~~.~~; and

D. Such other information or documentation as the State Treasurer may reasonably require to explain ~~substantiate~~ the deduction of service charges. Such documentation may include records of communications or correspondence with the owner, passbook provisions, signature card,

*Strike outs and underlining indicate changes from the Proposed Rules, as amended by the State Treasurer.

rules and regulations, by-laws, and any other documents concerning any agreement between the holder and the owner.

This rule shall also require the reporting of service charges if the total of such charges deducted from an item of property equals or exceeds the value of the item.

TRE 10 Reserved for Future Use.

TRE 11 Report of ~~Authority for~~ discontinuance. If payment of interest or dividends on property presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act ~~subject to Minn. Stat. §345.32(a) and (b)~~ was discontinued, before or after the property was presumed abandoned, by reason of the inactivity, dormancy or unclaimed status ~~abandonment~~ of the property, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. A copy of the form of ~~the valid, enforceable~~ contract which authorized such discontinuance of payment of interest or dividends; or

B. The citation of the authority ~~statute~~ for such discontinuance of payment of interest or dividends.

TRE 12 Reserved for Future Use.

TRE 13 Reporting Period. The provisions of Minn. Stat. §345.32(a)(4) and (5) and (b)(4) are effective as of July 1, 1977. Unless such sections are satisfied subsequent to said date the property shall be reportable to the State Treasurer.

TRE 14 Receipt of Statement. For purposes of Minn. Stat. §345.32(a)(4) and (b)(4), a tax report of regular statement of deposit shall be deemed to be "the statement" referred to in said sections.

TRE 15 Negative Property Report. A holder which has no property which is reportable pursuant to the Uniform Disposition of Unclaimed Property Act shall report that fact if so requested in writing by the State Treasurer.

APPROVED AS TO FORM AND LEGALITY
SEP. 25 1978 19___
WARREN SPANNAUS, ATTORNEY GENERAL
BY Lee E. Sheely
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 25 1978
Joan Anderson Growe
Secretary of State
1:15 P.M.

exhibit #4

PROPOSED RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Office of the State Treasurer Division of Unclaimed Property

Proposed Rules of Unclaimed Property Act

Order for Hearing

It is hereby ordered that a public hearing on the above-captioned rules be held at Conference Room D, Veterans Service Building, Ramsey County, St. Paul, Minnesota on March 20, 1978 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

It is further ordered that a notice of hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the notice of hearing be published in the *State Register*.

Jim Lord, State Treasurer

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held at Conference Room D, Veterans Service Building, Ramsey County, St. Paul, Minnesota on March 20, 1978 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, 1745 University Ave., St. Paul, Minnesota, 1-(612)-296-8118 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would have the effect of implementing and interpreting the Uniform Disposition of Unclaimed Property Act by defining "service charges," "property," "inactivity," and "deducted" as those terms are used in the Act; by explaining when service charges may be lawfully or contractually deducted, the authority for discontinuance of interest or dividends, when the holder may not discontinue the payment of interest or dividends, when the holder must substantiate any deductions, when the provision "excluding contracted service charges which may be deducted for a period not to exceed 1 year" shall take effect, and the waiver or non-enforcement of the right to service charges. It also defines the "reporting period," a "receipt of a statement," and a "negative property report" as those terms are used in the Act.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota State Treasurer, Division of Unclaimed Property, 303 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota, 55155. Additional copies will be available at the door on the day of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 345.56. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1974) any individual engaged to pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Jim Lord, State Treasurer

ROBERT J. CHRISTIANSON
GEORGE D. McCLINTOCK
EVERETT A. DRAKE
DONALD L. ROBERTSON
WRIGHT W. BROOKS
RODGER L. NORDBYE
GEORGE E. HARDING
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GORDON G. BUSDICKER
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HEIDI M. HOARD
DAVID P. PEARSON
JAMES G. RAY
STEVEN R. ANDERSON
JAY D. CHRISTIANSEN
CHARLES S. FERRELL
DAVID B. MILLER

FAEGRE & BENSON

1300 NORTHWESTERN BANK BUILDING

MINNEAPOLIS, MINNESOTA 55402

612/371-5300

J. B. FAEGRE (RETIRED)

JOHN C. BENSON
PAUL CHRISTOPHERSON
HAYNER N. LARSON
JOHN B. FAEGRE, JR.
COUNSEL

September 6, 1978

RECEIVED
SEP 8 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Lee L. Sheehy, Esq.
Special Assistant Attorney General
G-19K Administrative Building
St. Paul, MN 55155

Re: In the Matter of the Rules Governing the Uniform Disposition of Unclaimed Property Act

Dear Mr. Sheehy:

We represent Northwestern National Bank of Minneapolis (hereafter Northwestern) in the above matter.

We are in receipt of the findings and order adopting the rules of the State Treasurer and the rules as adopted by the State Treasurer and understand that they have been submitted to you and to the chief hearing examiner for review. We have the following comments on the rules as adopted.

TRE 9 includes the provision:

> This rule shall also require the reporting of service charges if the total of such charges deducted from an item of property equals or exceeds the value of the item.

This provision is a restatement of a provision that the hearing examiner found lacking in statutory authority. See Report of Hearing Examiner at paragraph 12. Northwestern's objection to the provision is three-fold. First, if service charges have been deducted from property for a one-year period and the total of such charges equals or exceeds the value of the property, there no longer is property that is reportable; there is no property subject to the Uniform Disposition of Unclaimed Property Act. That, simply, is the holding of the hearing examiner.

Second, to the extent that the provision in TRE 9 is intended to apply to accounts in existence at the time the Uniform Disposition of Unclaimed Property Act went into effect, the provision is retroactive, and retroactive applications of a statute by an administrative agency are not favored by the courts without explicit statutory authority. Davis, Administrative Law Treatise §5.08.

Third, to the extent that the provision would apply to accounts existing prior to now, Northwestern does not have records that reflect the disposition of long-closed accounts. The most relevant records have been discarded in the normal course of record maintenance.

TRE 9 also requires the reporting of the amount of service charges deducted from each item and the date or dates on which such service charges were deducted. The bank has two concerns with respect to this provision. Again, records are presently not kept in a fashion that would allow each service charge to be separately reported. The balance at the beginning of the period of inactivity as well as the balance when the property is due and reportable to the Treasurer, are available. Any additional reporting would be an undue burden on the bank, for which no justification has been shown on the record. Second, we note that this specific reporting requirement is a new addition to the rules. The public, including participants at the hearing, did not have an opportunity to comment on the burden that the requirement would place upon reporting entities. Accordingly, adoption of this specific portion of the rule without further opportunity for comment would be contrary to law.

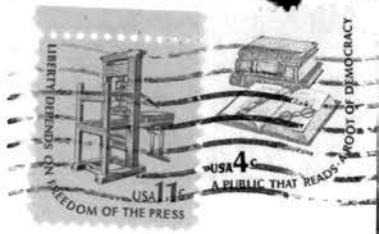
Very truly yours,

Brian B. O'Neill

BBO:ljt
cc: Chief Hearing Examiner
State Treasurer

FAEGRE & BENSON
1300 NORTHWESTERN BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402





Lee. L. Sheehy, Esq.
Special Assistant Attorney General
G-19K Administrative Building
St. Paul, MN 55155

Proposed Rules Governing Unclaimed Property Act

Chapter One: General

TRE 1 Purpose. The rules and regulations contained in this subchapter are for the purpose of implementing provisions of the Unclaimed Property Law.

TRE 2 Service charges. The term "service charges" means any type of charge deducted by a holder (as defined in subdivision 5 of Minn. Stat. § 345.31) from property subject to the Uniform Disposition of Unclaimed Property Act (Minn. Stat. §§ 345.31-345.60 inclusive, Laws of 1977, ch. 137), including, but not limited to charges imposed by virtue of the inactivity, dormancy, or abandonment of property such as service charges, handling charges, and administrative costs.

TRE 3 Property. The term "property" means any property that is reportable to the State Treasurer under the Uniform Disposition of Unclaimed Property Act, or would be reportable if service charges had not been deducted therefrom.

TRE 4 Inactivity. The term "inactivity" means nonoccurrence of any of the events or acts described in (1), (2), (3), (4) or (5) of Minn. Stat. § 345.32(a) or (1), (2), (3), or (4) of Minn. Stat. § 345.32(b).

TRE 5 Deducted. The term "deducted" shall also be deemed to mean "excluding."

Chapter Two: Service Charges Lawfully Withheld

TRE 6 Authority for service charges. Service charges shall not be deducted from property unless:

A. Expressly permitted by provisions of the Uniform Disposition of Unclaimed Property Act; and

B. Authorized by a statute other than the Uniform Disposition of Unclaimed Property Act or by a valid, enforceable contract which expressly provides for such charges and the terms of which are not inconsistent with the provisions of the Uniform Disposition of Unclaimed Property Act.

TRE 7 Contracted service charges. For purposes of Minn. Stat. §§ 345.32(a), (b), and (c), 345.34, 345.39 and rule TRE 6 B. hereof, an agreement in order to constitute a "contracted service charge", "charges that may lawfully be withheld", or "valid enforceable contract" must satisfy the following conditions:

A. The agreement must be in writing and executed by the customer.

B. The agreement shall expressly provide on the face thereof the specific amount or method by which such service charges shall be calculated and in no event shall the terms thereof be unreasonable or unconscionable.

C. Any modification or supplement, or amendment to an agreement otherwise satisfying these regulations must be assented to in writing by the customer.

D. Such agreement shall otherwise comply with all Minnesota Statutes and Federal Statutes and regulations to which holders are subject.

TRE 8 The provision "excluding contracted service charges which may be deducted for a period not to exceed one year" set forth in § 345.32(a), (b) and (c) shall apply to all contracts entered into on or after July 1, 1977 and to all contracts entered into prior to July 1, 1977, the service charge provisions of which are amended subsequent to July 1, 1977.

TRE 9 Substantiation of deductions. If service charges are deducted from property, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:

A. The citation of the statute or a copy of the form of contract authorizing such service charges.

B. The value or amount of each item of property, before any service charges are deducted therefrom.

C. The total amount of service charges deducted from each item and the date or dates on which such service charges were deducted.

D. Such other information or documentation as the State Treasurer may reasonably require to substantiate the deduction of service charges. Such documentation may include correspondence with customer, passbook provisions, signature card, rules and regulations, by-laws, and any other documentations concerning any agreement between the bank and the customer.

KEY: **PROPOSED RULES SECTION:** Underlining indicates additions to pre-existing rule language. ~~Strike outs~~ indicate deletions from pre-existing rule language. If all proposed rules in a set are totally new (i.e. non-amendatory) the entire set is printed in standard type face. **RULES SECTION:** Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

TRE 15

TRE 10 Waiver or non-enforcement of right. Service charges may not be deducted from property pursuant to a contract or statute if the holder would not have deducted such charges in the event the property had been claimed by the owner prior to being reported or remitted to the State Treasurer.

Chapter Three: Interest or Dividends

TRE 11 Authority for discontinuance. If payment of interest or dividends on property subject to Minn. Stat. §§ 345.32 (a) and (b) is discontinued at any time during the period of inactivity, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:

A. A copy of the form of a valid, enforceable contract which authorized such discontinuance of payment of interest or dividends; or

B. The citation of the statute which authorized such discontinuance of payment of interest or dividends.

TRE 12 Non-Enforcement of right. A contract or statute shall not be considered as authorizing discontinuance of payment of interest or dividends if such payment would not have been discontinued, or would otherwise have accrued to the benefit of the owner, in the event the property had been claimed by the owner prior to being reported or remitted to the State Treasurer.

Chapter Four: Miscellaneous

TRE 13 Reporting period. The provisions of Minn. Stat. §§ 345.32 (a) (4) and (5) and (b) (4) are effective as of July 1, 1977. Unless such sections are satisfied subsequent to said date the property shall be reportable to the State Treasurer.

TRE 14 Receipt of statement. For purposes of Minn. Stat. §§ 345.32 (a) (4) and (b) (4), a tax report or regular statement of deposit shall be deemed to be "the statement" referred to in said sections.

TRE 15 Negative property report. A person who has no property which is reportable pursuant to the Uniform Disposition of Unclaimed Property Act shall report that fact if so requested in writing by the State Treasurer.

STATE OF MINNESOTA
STATE TREASURER
DIVISION OF UNCLAIMED PROPERTY

In the Matter of the Proposed Adoption of Rules of the State Treasurer Division of Unclaimed Property Governing Minnesota Unclaimed Property Act.

FINDINGS AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Monday, March 20, 1978, in conference room D, Veterans Service Building, St. Paul, Minnesota. As required by Minn. Stat. § 15.0412 (Supp. 1977), proper notice was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

Thomas Fraser and Christopher Kelley, Special Assistant Attorneys General, appeared as counsel on behalf of the Office of State Treasurer. Georgia Johnson, Director, Division of Unclaimed Property, and David Epstein, consultant to the Division, testified on behalf of the State Treasurer's Office in support of the proposed rules. The hearing continued until all interested groups or persons had an opportunity to testify concerning the adoption of the proposed rules.

Briefs, arguing legal issues raised at the time of hearing, were submitted by: James A. Beitz, Esq., 650 Builders Exchange Building, Minneapolis, Minnesota 55402, on behalf of the Minnesota Bankers Association; Brian B. O'Neill, Esq., 1300 Northwestern Bank Building, Minneapolis, Minnesota 55402, on behalf of Northwestern National Bank of Minneapolis; David F. Fisher, Esq.,

1200 Title Insurance Building, Minneapolis, Minnesota 55401, appeared on behalf of Farmers and Mechanics Savings Bank of Minneapolis; and the State Treasurer's Office.

On May 4, 1978, the Hearing Examiner issued his Report.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced, and upon the records, files, and proceedings herein, I make the following

FINDINGS

1-7. Findings 1-7 of the Hearing Examiner are hereby adopted and incorporated by reference.

8. TRE 1. Finding 10 of the Hearing Examiner is hereby adopted and incorporated by reference.

9. TRE 2. Finding 11 of the Hearing Examiner is hereby adopted and incorporated by reference.

The Examiner suggested alternative wording for part of proposed TRE 2. The Treasurer agrees that the Examiner's suggested language is generally appropriate. However, the Examiner's revision restricts the scope of the rule to property described in § 345.32(a) and (b), which describes only some of the unclaimed property held by certain holders (primarily banks). The rule must also cover all unclaimed property described in §§ 345.32(c) and (d) and 345.33-345.39--property held by life insurance companies, utilities, financial institutions, fiduciaries, courts and public agencies, corporations, and others.

Accordingly, the Treasurer revises TRE 2 to read as follows:

> Service Charges. The term "service charges" means any type of deduction by a holder (as defined in Minn. Stat. § 345.31, subd. 5) from property presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, and also shall include: ~~charges deducted by a holder from property not yet presumed abandoned, which charges are made by reason of the inactivity, dormancy, or abandonment of property, including such charges as service charges, handling charges and administrative costs.~~

A. For the types of property described in Minn. Stat. §§ 345.32, 345.33, 345.35, and 345.37, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason of the non-occurrence of the events or acts that prevent the presumption of abandonment as described in those sections, or by reason of the inactivity, dormancy, or unclaimed status of the property; and

B. For the types of property described in Minn. Stat. §§ 345.34, 345.36, 345.38, and 345.39, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason of the inactivity, dormancy, or unclaimed status of the property.

The latter clause of the proposed rule has been expanded and paragraphed to make it more precise. The first clause still refers to service charges on all property after abandonment. Sections A and B, however, cover service charges imposed on property prior to the statutory presumption of abandonment. (Under the Act, the presumption of abandonment generally arises after seven years of inactivity or dormancy.) The two sections are aimed only at service charges imposed because of the unclaimed status of the property and not minimum balance or other regular maintenance charges. To this end, section A refers to the types of property for which the Act lists several criteria (events or acts) for abandonment (e.g., failure to increase or decrease balance in savings account). Section B, on the other hand, applies to property for which the Act specifies no criteria for abandonment other than being unclaimed for a given number of years.

As revised herein, TRE 2 is both needed and reasonable to carry out the provisions of the Act.

10. TRE 3-8. Proposed TRE 3-8 are withdrawn. With respect to proposed TRE 3, see Finding 11 and TRE 9.

11. TRE 9. Finding 18 of the Hearing Examiner is hereby adopted and incorporated by reference.

Of the four minor changes suggested by the Minnesota Bankers Association (hereinafter "MBA") and recommended by the Hearing Examiner, see Finding 18b and c, the first two are accepted. However, the Treasurer cannot agree to strike the two references to "each item" because that would allow reporting of service charges in the aggregate and frustrate not only the review of service charges but also the return of individual items of property to their owners.

Accordingly, proposed TRE 9 is revised to read as follows:

> Report ~~Substantiation~~ of service charges ~~deductions~~. If service charges have been ~~are~~ deducted ~~from property~~, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:
>
> A. The citation of the authority ~~statute~~ or a copy of the form of contract authorizing such service charges~~.~~;
>
> B. The value or amount of each item of property~~,~~ before any service charges were ~~are~~ deducted therefrom~~.~~;
>
> C. The amount of service charges deducted from each item and the date or dates on which such service charges were deducted~~.~~; and
>
> D. Such other information or documentation as the State Treasurer may reasonably require to explain ~~substantiate~~ the deduction of service charges. Such documentation may include records of communications or correspondence with the owner, passbook provisions, signature card, rules and regulations, by-laws, and any other documents concerning any agreement between the holder and the owner.
>
> This rule shall also require the reporting of service charges if the total of such charges deducted from an item of property equals or exceeds the value of the item.

The Treasurer has made several grammatical changes which do not affect the substance of the rule. The last sentence has been added to clarify the application of the rule to those items of property (such as bank accounts) which have

been "wiped out" or "zeroed out" by service charges. This sentence has been added in place of proposed TRE 3, which was also designed to require reporting of service charges.

The Hearing Examiner, in Finding 12, generally upheld TRE 3. He did, however, suggest an amendment that would require reporting of all service charges unless one year of service charges exhausted the property. The Hearing Examiner thus recognized the authority of the Treasurer to require reporting of service charges but limited such authority to service charges deducted for a period of more than one year.

This restriction on the Treasurer's right to review service charges cannot be accepted for several reasons. First, the provision authorizing only a one-year service charge does not apply to all abandoned property. See Minn. Stat. §§ 345.33-345.39 (Supp. 1977); Treasurer's Finding 9. Second, this one-year limitation was added in 1977 and holders have asserted that it does not apply to some of the property which will be reported during the next few years. Third, the fact that only a one-year service charge was taken does not automatically make it a legal charge. An independent legal basis such as a contract, must exist before the charge can be taken. Moreover, the charge cannot be unreasonable. See Brunswick Corporation v. Northwestern National Bank & Trust Company, 214 Minn. 370, 8 N.W.2d 333 (1943).

The Unclaimed Property Act allows deduction of "contracted service charges," see Minn. Stat. § 345.32 (Supp. 1977), and "charges that may lawfully be withheld," see Minn. Stat. § 345.39 (Supp. 1977) and Minn. Stat. § 345.32 (1976). Thus, the Act, of course, allows only lawful charges. The Treasurer is charged with the enforcement of the Act. If the Treasurer cannot review the legality of service charges, no authority exists to oversee the service charge practices of holders. By definition, the owners of abandoned property cannot discover or contest the validity of service charges.

In order to determine whether charges have been deducted from unclaimed property, and whether such charges are lawful, the Treasurer must have holders report and explain such charges. The testimony and exhibits offered by the Treasurer's office at the hearing demonstrate that service charging has been used as a means of eliminating or reducing the property to be reported to the Treasurer.

For example, Exhibit 16 shows that one bank's service charges eliminated 264 accounts. The exhibit also reveals that service charges up to $191.50 per account were imposed. If that bank had not reported those service charges, the Treasurer would have no way of knowing that such charges had been made or that these accounts had ever existed.

To summarize, in order to make effective the statutory mandates regarding "lawful" service charges, the Treasurer has the authority to require holders to report and explain their service charges. This is true whether or not the service charging exhausts the property. Accordingly, TRE 9 (as revised) is a reasonable and necessary means for carrying out the provisions of the Act.

12. TRE 10. Proposed TRE 10 is withdrawn.

13. TRE 11. Finding 20 of the Hearing Examiner is hereby adopted and incorporated by reference.

The Treasurer agrees to the changes suggested by the MBA and recommended by the Examiner. The further change recommended by the Examiner, however, unduly narrows the application of the rule to certain holders of property. See Treasurer's Finding 9. The Treasurer has also made some minor changes to clarify the scope of the rule. Accordingly, proposed TRE 11 is revised to read as follows:

> Report of ~~Authority for~~ Discontinuance. If payment of interest or dividends on property presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act was ~~subject to Minn. Stat. § 345.32(a) and (b) is~~ discontinued, before or after the property was presumed abandoned, by reason of

the inactivity, dormancy or unclaimed status ~~abandonment~~ of the property, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:

A. A copy of the form of ~~the valid~~ ~~enforceable~~ contract which authorized such discontinuance of payment of interest or dividends; or

B. The citation of the authority ~~statute~~ for such discontinuance of payment of interest or dividends.

As revised, proposed TRE 11 is both needed and reasonable and necessary "to carry out the provisions" of the Act.

14. TRE 12. Proposed TRE 12 is withdrawn.

15. TRE 13-15. Finding 22 of the Hearing Examiner is hereby adopted and incorporated by reference.

16. Finding 23 of the Hearing Examiner is hereby adopted and incorporated by reference, subject to the caveats as to the one-year limitation expressed in Treasurer's Finding 11.

17. Conclusions 1 and 2 of the Hearing Examiner are hereby adopted and incorporated by reference.

18. The Treasurer has documented its statutory authority to promulgate the proposed rules (as revised herein).

19. The Treasurer has demonstrated the need for, and reasonableness of, the proposed rules (as revised herein) by an affirmative presentation of facts.

Based upon the foregoing Findings, the records, files, and proceedings herein, the applicable statutory standards or criteria, and having confirmed the reasonableness and need for the proposed rules, I make the following

O R D E R

IT IS ORDERED that proposed TRE 1, 2, 9, 11, 13, 14 and 15 (as revised herein) are adopted this 29 day of August, 1978, pursuant to authority vested in me.

STATE OF MINNESOTA

JIM LORD
Treasurer

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 - 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

May 4, 1978

TO ALL INTERESTED PARTIES:

Re: In the Matter of the Proposed Adoption of Rules of the State Treasurer Division of Unclaimed Property Governing Minnesota Unclaimed Property Act.
Docket No. TREAS-78-001-PE

The Report of the Hearing Examiner in the above-entitled matter has been submitted to the State Treasurer. Please note that the Report is a recommendation only and that the Treasurer may accept, modify or reject any part of it. However, the Treasurer may not take any final action on the proposed rule until at least five working days have expired. During that time, the Treasurer and the Office of Hearing Examiners will make a copy of the Report available for review by any interested individual. Copies will be furnished by the Office of Hearing Examiners for $1.30 each. Please use the order form on the reverse side.

A copy of the Report has also been filed with the Legislative Reference Library.

Sincerely,

Susan K. Derus

SUSAN K. DERUS
Administrative Assistant

SKD:sw

AN EQUAL OPPORTUNITY EMPLOYER

TO: Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota - 55104

Please send me _____ copy(ies) of the Report of the Hearing Examiner in Docket No. Treas-78-001-PE I have enclosed a check in the amount of $_____ made payable to: State Treasurer - Hearing Examiners' account.

_____ (name)

_____ (address)

_____ (city)

(Please type or print the above information clearly.)

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE TREASURER
DIVISION OF UNCLAIMED PROPERTY

In the Matter of the Proposed Adoption of Rules of the State Treasurer Division of Unclaimed Property Governing Minnesota Unclaimed Property Act.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Monday, March 20, 1978 in conference room D, Veterans Service Building, St. Paul, Minnesota

Thomas Fraser and Christopher Kelley, Special Assistant Attorneys General, appeared as counsel on behalf of the Office of State Treasurer. Georgia Johnson, Director, Division of Unclaimed Property, and David Epstein, consultant to the Division, testified on behalf of the State Treasurer's Office in support of the proposed rules. The hearing continued until all interested groups or persons had an opportunity to testify concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Office of the State Treasurer (hereinafter "Treasurer") shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Treasurer on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Treasurer shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On January 31, 1978, the Treasurer filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On February 13, 1978, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1500.

3. On February 17, 1978, the Treasurer mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On February 23, 1978, the Treasurer filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Treasury personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through April 10, 1978 for the receipt of written comments and statements.

6. On February 6, 1978, a Notice of Intent to Seek Outside Information concerning the proposed rules was published at 2 State Register 1482. The Treasurer received no responses to the publication.

7. Statutory authority to promulgate rules to carry out the provisions of the Unclaimed Property Act is contained in Minn. Stat. §§ 345.41(b)(5) and 345.56. These sections read as follows:

345.41 Report of Abandoned Property. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

* * *

(5) other information which the state treasurer prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

345.56 Rules and Regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 345.31 to 345.60.

8. Briefs, arguing legal issues raised at the time of hearing, were submitted by: James A. Beitz, Esq., 650 Builders Exchange Building, Minneapolis, Minnesota - 55402, on behalf of the Minnesota Bankers Association; Brian B. O'Neill, Esq., 1300 Northwestern Bank Building, Minneapolis, Minnesota - 55402, on behalf of Northwestern National Bank of Minneapolis; David F. Fisher, Esq., 1200 Title Insurance Building, Minneapolis, Minnesota - 55401, appeared on behalf of Farmers and Mechanics Savings Bank of Minneapolis; and the State Treasurer's Office.

9. The Treasurer's brief states that, "Rule-making in Minnesota, as in federal administrative law, is based upon a 'notice-and comment' rule-making, not adjudicatory rule-making." This is an incorrect statement of the law. Minn. Stat. § 15.0412, subd. 4, places the burden on the agency to "make an affirmative presentation of facts establishing the need for and reasonableness of the rule proposed for adoption and fulfilling any relevant, substantive or procedural requirements imposed on the agency by rule or law." The agency may propose rules "only pursuant to authority delegated by law" and must document that authority at the time of hearing. See Minn. Stat. §§ 15.0412, subd. 1, and 15.052, subd. 3. An agency may not adopt rules which are substantially different than those which were proposed. See Minn. Stat. § 15.052, subd. 4, and Minn. Rule HE 108. Rule-making in Minnesota places the aforementioned burdens on a petitioning agency to justify the proposed rules. As such, there are elements of

adjudication in the process (the Examiner must find that the agency has documented statutory authority and shown need and reasonableness) and "notice-and-comment" (comments are received and may result in amendments to the proposed rules). Pure "notice-and-comment" rule-making only occurs in the promulgation of temporary rules pursuant to Minn. Stat. § 15.0412, subd. 5.

10. Proposed TRE 1 states the general purpose and intent of the rules.

a. The Treasurer proposed to amend TRE 1 to specify the statutes sought to be implemented. The amendment reads:

> Purpose. The rules and regulations contained in this subchapter are for the purpose of implementing provisions of the ~~Unclaimed Property Law~~ Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31 - 345.60, as amended.

The Examiner concludes that proposed TRE 1, as amended, is both needed and reasonable.

11. Proposed TRE 2 defines the term "service charges" as it is used in the Uniform Disposition of Unclaimed Property Act, hereinafter "Act" and rules herein. The Treasurer contends that:

> Service charges imposed on inactive or dormant accounts may be termed by the respective bank or financial institution as a dormancy charge, handling charge, administrative cost or other type of service charge. The practical effect of these charges, however, is the same, as each may reduce or eliminate the accounts on which they are imposed. It is therefore necessary that the definition of service charges be all-inclusive, in order that the rules governing service charges or the formation of contracts which provide for the leveling of such charges encompass the charges however characterized.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 2 as follows for the purpose of clarity:

> Service charges. The term "service charges" means any type of charge deducted by a holder (as defined in ~~subdivision 5 of~~ Minn. Stat. § 345.31, subd. 5) from property ~~subject~~ presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, ~~(Minn. Stat. §§ 345.31 345.60 inclusive, Laws of 1977, ch. 137), including, but not limited to charges~~ and also shall include charges deducted by a holder from property not yet presumed abandoned, which charges are made by reason ~~imposed by virtue~~ of the inactivity, dormancy, or abandonment of property, including such charges as ~~such as~~ service charges, handling charges, and administrative costs.

b. There were several objections to proposed TRE 2 on the ground that it affects property and bank service charges

thereon, before the property is presumed abandoned pursuant to Minn. Stat. § 345.32. The banks argue that the Act speaks only to property after it is presumed abandoned. Consequently, the Treasurer has no statutory authority to regulate property which has been left dormant but is not yet presumed abandoned.

c. Minn. Stat. § 345.32(a), (b) and (c) specify types of bank-held property, "excluding contracted service charges which may be deducted for a period not to exceed one year." Minn. Stat. § 345.41(g) states that Holders of § 345.32 property "shall not impose any chages against [that] property." The "excluding contracted service charges. . ." language can only be read to apply to the period of time during which service charges are deducted from property prior to the property becoming presumed abandoned. See Minn. Stat. § 645.16.

Proposed TRE 2 is an interpretive rule (see 1 Cooper, State Administrative Law, Chapter VII, section 1 at pp. 173-77) which clarifies the statutory mandate that banks may deduct only one year of service charges for the period of time before the property is presumed abandoned. The rule also sets out examples of "service charges". The Examiner concludes that proposed TRE 2, as amended, is both needed and reasonable and is necessary to "carry out the provisions" of the Act.

The Examiner, however, would suggest alternative wording for amended TRE 2 as follows:

> . . .and also shall include charges deducted by a holder from property prior to its becoming presumed abandoned, which charges are made by reason of the non-occurrence of the events or acts described in Minn. Stat. §§ 345.32(a)(1) - (5) or 345.32(b)(1) - (4). Charges include service charges, handling charges and administrative costs.

12. Proposed TRE 3 defines the term "property" as it is used in the Act and rules herein. The Treasurer contends that:

> The definition of the term "property" clarifies the reference to any property reportable under the Uniform Disposition of Unclaimed Property Act, or

which would be reportable if service charges had not been deducted. This rule provides that property which would be subject to service charging pursuant to a contract is also subject to the Unclaimed Property Act and these rules. Because contracts providing for service charges have the potential of defeating the purpose of the Act, it is necessary to specify that the property included in those contracts are subject to these rules.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 3 as follows for the purpose of clarity:

> Property. The term "property" means any property that is ~~reportable to the State Treasurer under~~ presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, or which would ~~be reportable~~ have become presumed abandoned if service charges had not been deducted therefrom.

b. There were several objections to the second clause in the rule on the ground that it goes beyond the scope of the Act, and thus, is lacking in statutory authority.

c. Minn. Stat. § 345.32(a) - (c) provides that only one year of "contracted service charges" may be deducted from property in making the determination of whether or not it is presumed abandoned. If that one year deduction exhausts the property, there would be nothing to report. However, if more than one year of properly deductible service charges are needed to exhaust the property, it is still reportable, with only one year of deductions excluded.

As written, TRE 3, as amended, is too broad in scope and lacking in statutory authority. The Examiner suggests that it be rewritten as follows:

> . . .Act, or which would have become presumed abandoned if not more than one year of service charges had been deducted therefrom.

So amended, the Examiner concludes that TRE 3 is both needed and reasonable and is necessary to "carry out the provisions" of the Act.

13. Proposed TRE 4 defines the term "inactivity" as it is used in the proposed rules. The Treasurer contends:

> It is during this period of inactivity that service charges are deducted from accounts or

their interest is discontinued. This definition insures that the rules apply to the property holders specified in Sections 345.32(a) and (b) of the Unclaimed Property Act and to the definition of inactivity in those sections.

a. TRE 4 is needed only insofar as the term is included in proposed TRE 2 and 11. (See discussion of TRE 2, supra, and TRE 11, infra.) The Examiner concludes that the proposed rule is reasonable and is needed if the term is left in TRE 2 and 11. The Examiner suggests, however, that TRE 4 be deleted.

14. Subsequent to hearing, the Treasurer withdrew proposed TRE 5.

15. Proposed TRE 6 describes the conditions, or requirements, for the proper deduction of service charges.

a. Subsequent to Hearing, the Treasurer proposed to amend TRE 6 as follows:

> Authority for service charges. Service charges shall not be deducted from property unless:
>
> A. Expressly permitted by provisions of the Uniform Disposition of Unclaimed Property Act; and
>
> B. Authorized by a statute other than the Uniform Disposition of Unclaimed Property Act or by a valid, enforceable contract.~~which expressly provides for such charges and the terms of which are not inconsistent with the provisions of the Uniform Disposition of Unclaimed Property Act.~~

This amendment was made in response to comments from the banking industry that the deleted language would drastically alter banking practices.

b. The Minnesota Bankers Association (MBA) proposed that TRE 6 include a provision for authorization "by federal law" to remove problems of possible conflict and preemption.

c. Minn. Stat. § 345.32 states that "contracted service charges. . .may be deducted. . . ." Proposed TRE 6, as amended, only speaks to service charges allowed in the Act and to those authorized by other statutes. To the extent that the rule merely reiterates the content of the statute, it is

unneeded, and to the extent that it goes beyond what the statute mandates, it is lacking statutory authority. Minn. Stat. § 15.0412, subd. 1, states that no agency "shall adopt a rule which duplicates [statutory] language. . .unless. . . ." The intent of this provision is to proscribe the reiteration of statutory requirements, whether it be by exact duplication of the language or by a restated version thereof. The Examiner concludes that proposed TRE 6 be deleted.

16. Proposed TRE 7 specifies the requirements for a valid contract so that service charges may be lawfully deducted.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 7 as follows:

> Contracted service charges. For purposes of Minn. Stat. §§ 345.32(a), (b), and (c), 345.34, 345.39 and rule TRE 6 #B ~~hereof, an agreement~~ in order to constitute a ~~"contracted service charge," "charges that may lawfully be withheld", or "valid enforceable contract" must satisfy the following conditions:~~ "valid enforceable contract," or to authorize a "contracted service charge" or a "charge that may lawfully be withheld," there must be an agreement between the holder and owner which satisfies the following conditions:
>
> A. The agreement must be in writing and executed by the ~~customer.~~ owner.
>
> B. The agreement shall expressly provide on the face thereof the specific amount or method by which such service charges shall be calculated and in no event shall the terms thereof be unreasonable or unconscionable.
>
> C. Any modification, ~~or~~ supplement, or amendment to an agreement otherwise satisfying these ~~regulations~~ rules shall be made by sending written notice by first class mail to the owner, provided that such notice is actually received. ~~be assented to in writing by the customer.~~ Receipt may be presumed if the notice is not returned.
>
> D. Such agreement shall not otherwise ~~comply with all~~ violate any other Minnesota Statutes and Federal Statutes and regulations to which holders are subject.

b. Northwestern argues that there is no statutory authority for this rule. Also, that TRE 7 is in conflict with accepted legal principles of contract law.

c. Proposed TRE 7 is a legislative rule for which there is no specific statutory authority. Administrative agencies may not change the law without accompanying statutory mandate. See DR-78-004-PE and Wallace v. Commissioner of Taxation, 184 N.W. 2d 588 (1971). In Wallace, the Court stated:

> It is well established that the legislature may confer discretion on the commissioner in the execution or administration of the law. it may not give him authority to determine what the law shall be or to supply a substantive provision of the law which he thinks the legislature should have included in the first place. Id. at p. 594. see also Minnesota Bankers Association v. State, 397933 (D. Minn. Ramsey County, filed April 25, 1975, Memorandum Opinion, p. 16).

Minn. Stat. § 50.10 requires only that rules and regulations be conspicuously posted; and printed in full in passbooks or other evidences of deposit; and the "same shall be prima facie evidence of the terms and conditions of their mutual transactions." One must assume that if the legislature had desired that Minnesota law regarding requirements for contracted service charges be changed, it would have been done legislatively or specific authority granted to the Treasurer. The Examiner concludes that proposed TRE 7 is without statutory authority and should be deleted. See Cooper, supra.

17. Subsequent to hearing, the Treasurer withdrew proposed TRE 8.

18. Proposed TRE 9 specifies information which must be included in the abandoned property report if any service charges were deducted from that property by the holder.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 9 as follows:

> Substantiation of deductions. If service charges are deducted from property, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:
>
> A. The citation of the statute or a copy of the form of contract authorizing such service charges.

B. The value or amount of each item of property, before any service charges are deducted therefrom.

C. The amount of service charges deducted from each item and the date or dates on which such service charges were deducted.

D. Such other information or documentation as the State Treasurer may reasonably require to substantiate the deduction of service charges. Such documentation may include records of communications or correspondence with ~~customer~~ the owner, passbook provisions, signature card, rules and regulations, by-laws, and any other ~~documentations~~ documents concerning any agreement between the ~~bank~~ holder and the ~~customer~~ owner.

b. The MBA proposed to, replace the word "Substantiation" with Report in the rule title and replace the same word with explain in D.; replace "the statute" with authority; strike "of each item" in B.; and replace "each item" in C. with such property.

c. The Examiner concludes that proposed TRE 9, as amended by the Treasurer, is both needed and reasonable. However, the Examiner suggests that the rule also be amended as set out in paragraph b. above.

19. Proposed TRE 10 sets out the "derivative principle" in favor of the Treasurer regarding abandoned property.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 10 as follows:

> Waiver or non-enforcement of right. Service charges may not be deducted from property pursuant to a contract or statute if the holder ~~would not have deducted~~ has a pattern or practice of not deducting such charges in the event the property ~~has been~~ is claimed by the owner prior to being reported or remitted to the State Treasurer.

The Treasurer cited two California cases and one Minnesota case, State v. Northwestern National Bank, 18 N.W. 2d 569 (1945), as authority for the proposition.

b. The "derivative principle" or "doctrine of waiver" has not been specifically addressed in Minnesota. Proposed TRE 10 is a legislative rule for which there is no statutory authority. The rule effectively makes new law and the Treasurer is without authority to do so. See Wallace,

supra. The Examiner recommends that TRE 10 be deleted.

20. Proposed TRE 11 specifies information which must be included in the abandoned property report if the payment of interest or dividends is discontinued by the holder prior to reporting the property.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 11 as follows:

> Authority for discontinuance. If payment of interest or dividends on property subject to Minn. Stat. § 345.32(a) and (b) is discontinued ~~at any time during the period of inactivity,~~ by reason of the inactivity, dormancy or abandonment of property, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. § 345.41:
>
> A. A copy of the form of ~~a~~ the valid, enforceable contract which authorized such discontinuance of payment of interest or dividends; or
>
> B. The citation of the statute which authorized such discontinuance of payment of interest or dividends.

b. The MBA proposed to replace "Authority for" with Reports of and "statute" with authority.

c. In accordance with the Examiner's suggestions regarding TRE 2 and 4, the following change is recommended:

> . . .discontinued by reason of the non-occurrence of the events or acts described in Minn. Stat. §§ 345.32(a)(1) - (5) or 345.32(b)(1) - (4), the holder shall. . . .

The Examiner concludes that proposed TRE 11, as amended by the Treasurer, is both needed and reasonable. However, the Examiner suggests that the rule also be amended as set forth in paragraph b. above.

21. Proposed TRE 12 sets out the "derivative principle" in regard to the discontinuance of interest or dividends in favor or the Treasurer.

a. Subsequent to hearing, the Treasurer proposed to amend TRE 12 as follows:

> Non-Enforcement of right. A contract or statute shall not be considered as authorizing discontinuance of payment of interest or dividends if, as a pattern or practice, such payment would not have been discontinued, or

would otherwise have accrued to the benefit of the owner, in the event the property ~~has~~ had been claimed by the owner prior to being reported or remitted to the State Treasurer.

b. This proposed rule adopts the same principle of law as does TRE 10. For the same reasons as set out in Finding 19, the Examiner recommends that TRE 12 be deleted.

22. Proposed TRE 13 specifies the effective date and applicability of the Act. Proposed TRE 14 defines the term "statements" as used in Minn. Stat. § 345.32(a)(4) and (b)(4). Proposed TRE 15 sets forth a procedure whereby the Treasurer can require a negative property report from any holder. The Examiner concludes that proposed TRE 13, 14 and 15 are needed and reasonable.

23. Much concern was expressed at hearing regarding the effect of the proposed rules on property not yet presumed abandoned. The rules herein, as recommended to be amended, do no more than what the statute already mandates. Banks will be compelled to maintain certain records on inactive accounts because at the end of the seven-year period, only one year of service charges may be deducted to determine whether or not the bank holds a presumed abandoned account. Information as required by TRE 9 and 11 will also have to be kept. Minn. Stat. § 345.41(h) does, however, allow reporting of property prior to its becoming abandoned "with the permission of the state treasurer".

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the State Treasurer. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . .(4) make a report on each proposed agency action. . .taking notice of the degree to which the agency has (i) documented its statutory authority

to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule; and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Treasurer has documented its statutory authority to promulgate the proposed rules with the exceptions noted in Findings 12.c., 15.c., 16.c., 19.b. and 21.b.

4. The Examiner concludes that the Treasurer has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts with the exceptions noted in Findings 13.a. and 15.c.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Treasurer adopt proposed TRE 1, 2, 3, 9, 11, 13, 14 and 15, as amended by the Treasurer subsequent to hearing and recommended to be amended in this Report, and on the basis of the record made herein.

Dated: May 4, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

TREAS-78-001-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE TREASURER
DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 20, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the State Treasurer on May 4, 1978; and

WHEREAS, the State Treasurer has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the State Treasurer has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the State Treasurer has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the State Treasurer has the responsibility of submitting the complete hearing record and the rules as adopted by the State Treasurer to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 31st day of August, 1978.

DUANE R. HARVES
Chief Hearing Examiner

exhibit #1

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DIVISION OF UNCLAIMED PROPERTY GOVERNING THE MINNESOTA UNCLAIMED PROPERTY ACT

NOTICE OF SEEKING OUTSIDE INFORMATION

NOTICE IS HEREBY GIVEN that the State Treasurer, Division of Unclaimed Property is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the Uniform Dispositon of Unclaimed Property Act.

Any interested persons may submit data or views on this subject in writing or orally to:

Randall A. LaFoy or
Georgia M. Johnson
Minnesota State Treasurer's Office
303 State Administration Building
St. Paul, Minnesota 55155
1-(612)-296-2568

Any written material received by the agency shall become a part of the hearing record in the event rules governing this subject are promulgated.

Jim Lord, State Treasurer

Date:

Exhibit # 2

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held at Conference Room D, Veterans Service Building, St. Paul, Minnesota

on March 20, 1978 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Jim Lord, State Treasurer

exhibit #3

State of Minnesota

Jim Lord
Treasurer

State Executive Council
State Board of Investment
Treasurer Metropolitan Airports Commission

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held at Conference Room D, Veterans Service Building, Ramsey County, St. Paul, Minnesota, on March 20, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, 1745 University Avenue, St. Paul, Minnesota, 1-(612)-296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would have the effect of implementing and interpreting the Uniform Disposition of Unclaimed Property Act by defining "service charges," "property," "inactivity," and "deducted" as those terms are used in the Act; by explaining when service charges may be lawfully or contractually deducted, the authority for discontinuance of interest or dividends, when the holder may not discontinue the payment of interest or dividends, when the holder must substantiate any deductions, when the provision "excluding contracted service charges which may be deducted for a period not to exceed 1 year" shall take effect, and the waiver or non-enforcement of the right to service charges. It also defines the "reporting period," a "receipt of a statement," and a "negative property report" as those terms are used in the Act.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota State Treasurer, Division of Unclaimed Property, 303 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota, 55155. Additional copies will be available at the door on the day of the hearing. The agency's authority to promulgate

the proposed rules is contained in Minn. Stat. §345.56. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimoney they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. §10A.01, Subd. 11 (1974) any individual engaged to pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Jim Lord

Jim Lord, State Treasurer

Date: February 7, 1978

In the Matter of the Proposed Adoption of Rules of the State Treasurer Division of Unclaimed Property Governing Minnesota Unclaimed Property Act.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Thomas Fraser, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: August 31, 1978

Thomas Fraser

THOMAS FRASER
Special Assistant
Attorney General

State Treasurer's Office

Unclaimed Property Division

Adopted Rules Governing the Uniform Disposition of Unclaimed Property Act

The rules proposed and published at State Register Volume 2, Number 32, pp. 1500 - 1502, February 13, 1978, 2 S. R. 1500, are adopted as of August 29, 1978, and are identical to their proposed form, with the following amendments: Rules as Adopted.

Chapter One: General

TRE 1 Purpose. The rules and regulations contained in this subchapter are for the purpose of implementing provisions of the ~~Unclaimed-Property-Law.~~ Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§345.31 - 345.60, as amended.

TRE 2 Service Charges. The term "service charges" means any type of ~~charge-deducted~~ deduction by a holder (as defined in ~~subdivision-5-of~~ Minn. Stat. §345.31, subd. 5) from property ~~subject~~ presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, ~~(Minn. Stat. §§345.31---345.60-inclusive,--Laws-of-1977,-ch.-137),-including, but-not-limited-to-charges-imposed-by-virtue-of-the-inactivity,-dormancy, or-abandonment-of-property-such-as-service-charges,-handling-charges, and-administrative-costs.~~ and also shall include:

A. For the types of property described in Minn. Stat. §§345.32, 345.33, 345.35 and 345.37, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason of the non-occurrence of the events or acts that prevent the presumption of abandonment as described in those sections, or by reason of the inactivity, dormancy, or unclaimed status of the property; and

B. For the types of property described in Minn. Stat. §§345.34, 345.36, 345.38 and 345.39, deductions by a holder from property prior to the presumption of abandonment, which deductions are made by reason

of the inactivity, dormancy, or unclaimed status of the property.

TRE 3 - TRE 8 Reserved for Future Use.

Chapter Two: Service Charges Lawfully Withheld

TRE 9 ~~Substantiation~~ Report of ~~deductions~~ service charges. If service charges ~~are~~ have been deducted ~~from property~~, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. The citation of the ~~statute~~ authority or a copy of the form of contract authorizing such service charges~~.~~;

B. The value or amount of each item of property~~,~~ before any service charges ~~are~~ were deducted therefrom~~.~~;

C. The ~~total~~ amount of service charges deducted from each item and the date or dates on which such service charges were deducted~~.~~; and

D. Such other information or documentation as the State Treasurer may reasonably require to ~~substantiate~~ explain the deduction of service charges. Such documentation may include records of communications or correspondence with ~~customer~~ the owner, passbook provisions, signature card, rules and regulations, by-laws, and any other ~~documentations~~ documents concerning any agreement between the ~~bank~~ holder and the ~~customer~~ owner.

This rule shall also require the reporting of service charges if the total of such charges deducted from an item of property equals or exceeds the value of the item.

TRE 10 Reserved for Future Use.

Chapter Three: Interest or Dividends

TRE 11 ~~Authority for~~ Report of discontinuance. If payment of interest or dividends on property ~~subject to Minn. Stat. §§345.32 (a) and (b) is~~ presumed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act was discontinued, ~~at any time during the period of inactivity,~~ before or after the property was presumed abandoned, by reason of the inactivity, dormancy or unclaimed status of the property, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. A copy of the form of ~~a valid, enforceable~~ contract which authorized such discontinuance of payment of interest or dividends; or

B. The citation of the ~~statute~~ authority for ~~which authorized~~ such discontinuance of payment of interest or dividends.

TRE 12 Reserved for Future Use.

Chapter Four: Miscellaneous

TRE 13 Reporting period. The provisions of Minn. Stat. § 345.32(a)(4) and (5) and (b)(4) are effective as of July 1, 1977. Unless such sections are satisfied subsequent to said date the property shall be reportable to the State Treasurer.

TRE 14 Receipt of statement. For purposes of Minn. Stat. § 345.32(a)(4) and (b)(4), a tax report or regular statement of deposit shall be deemed to be "the statement" referred to in said sections.

TRE 15 Negative property report. A ~~person who~~ holder which has no property which is reportable pursuant to the Uniform Disposition of Unclaimed Property Act shall report that fact if so requested in writing by the State Treasurer.

exhibit #6

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Randall A. LaFoy being duly sworn on oath deposes and says:

1) That he is an employee of the State Treasurer, Unclaimed Property Division of the State of Minnesota.

2) That on the 2nd day of February, 1978, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 2nd day of February, 1978, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Randall A. LaFoy

Suscribed and sworn to before me this

17th day of February, 1978.

Ramsey County, Minnesota

My Commission expires 9-30-82

MARY B. RANDOLPH
RAMSEY COUNTY
NOTARY PUBLIC MINNESOTA
MY COMMISSION EXPIRES SEPT. 30, 1982

Mary B. Randolph

exhibit #7

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

CERTIFICATE OF DELIVERY SECRETARY OF STATE LIST

I hereby certify that the attached No Labels, 1 sheets constitute the complete list of persons, associations, and other interested groups who as of 3:45 o'clock P.M., this 2nd day of February, 1978, have requested pursuant to M.S. 1976, 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

Exhibit #8

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

AFFIDAVIT OF MAILING

Randall A. LaFoy being first duly sworn, deposes and says:

That on the 17th day of February 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Randall A. LaFoy

Subscribed and sworn to before me this 17th day of February, 1978.

Mary B. Randolph

MARY B. RANDOLPH
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES SEPT. 30, 1982

exhibit #10

STATE OF MINNESOTA

OFFICE OF STATE TREASURER

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES IMPLEMENTING PROVISIONS OF THE UNCLAIMED PROPERTY LAW

STATEMENT OF NEED AND EVIDENCE

I
AUTHORITY TO ADOPT RULES

The above-captioned rules are intended to implement the provisions of the Uniform Disposition of Unclaimed Property Act, Minn. Stat. §345.31-345.60, inclusive (sometimes hereinafter referred to as the "Unclaimed Property Act"). Sections 345.41(b)(5) and 345.56 expressly authorize the State Treasurer to make such rules to carry out the provisions of the Act.

II
DESCRIPTION OF UNCLAIMED PROPERTY ACT

The Unclaimed Property Act was enacted in 1969. Banking institutions, however, have been subject to various versions of this law since 1937. Laws of 1937, ch. 358, §§1-7, Minn. Stat. §48.521-.528 (1944). In upholding the constitutionality of the 1943 law, the Supreme Court of Minnesota described the purpose of the law:

> ". . . to protect the interests of depositors from the risks which attend long neglected accounts, by taking them into custody when they have been inactive so long as to be presumptively abandoned . . .". State v. Northwestern National Bank, 219 Minn. 471, 482 18 N.W.2d 569, 575 (1945).

The Unclaimed Property Act requires that unclaimed monies such as lost or forgotten savings accounts, uncashed payroll checks, unclaimed utility refunds, department store credit balances and uncashed dividend checks be turned over to the State of Minnesota for safekeeping. Upon receiving reports of the names and addresses of the lawful owners, the State Treasurer will publish their names, mail notices and take other steps to locate the owners, such as checking telephone directories, vital statistics and probate records. In some cases 30% or more of the monies are returned to the person to whom they belong. In any event, the money always belongs to the owner and it can be claimed by him or his successors at any time; however, until so claimed all Minnesotans get the advantage of the use of the money since it is kept in the State's general fund.

III
NEED FOR RULES

Investigations and examinations conducted by the staff of the State Treasurer's Office have uncovered a pattern of massive noncompliance with the Unclaimed Property Act. A report issued on August 12, 1977, reviewing the industry base and reports filed by holders revealed a "serious lack of compliance with" the Act.

Noncompliance frequently results from improper service charging and cessation of interest payments. In the case of savings accounts, checking accounts, trust items, or bank exchange items such as money orders, cashier's, certified or official checks, the bank or financial institution will cease crediting interest and begin to service charge the accounts after they have remained unclaimed by the owner for a

specified length of time. Depending on the practice of the bank and the size of the account, these funds could be entirely wiped out and brought into the bank's income, or at least substantially reduced. Our examinations and inquiries have found that Minnesota banks are taking as their own accounts ranging from less than $1.00 to $200.00. In most cases these accounts are taken without adequate notice to the depositors. Furthermore, there is usually no contract with the customer providing for such charges other than the fine print on a signature card purporting to subject the customer to all bank bylaws then in effect or thereafter adopted.

Should the owner come forward, the bank will often waive the service charges and refund the full amount of the account to him. However, when reporting unclaimed property to the State Treasurer, those accounts, or portions thereof, that have been wiped out are never included. As a result, hundreds of thousands of accounts are never reported, making it impossible for the State Treasurer to locate their owners as is expressly required by the Unclaimed Property Act. In addition, many accounts are substantially reduced, either through service charges or the cessation of interest, making it impossible for the State Treasurer to refund to the depositor the full amount of his account.

Examinations of banks by the State Treasurer's Office have revealed that thousands of Minnesotans have had their accounts service-charged out of existence and taken by the bank as their own income. Based on findings to date, it is clear that if the banks were to report to the State Treasurer pursuant to the Unclaimed Property Act the names of

the Minnesotans who are entitled to these monies, millions of dollars could be returned to them.

The proposed rules are designed to implement the Unclaimed Property Act and to help insure compliance therewith by the holders of abandoned monies. In those cases where the holder is simply unaware of its reporting responsibility, these rules will clarify and simplify that responsibility. Where, on the other hand, the holder has attempted to avoid compliance through practices which are contrary to the statutory provision of the Unclaimed Property Act, these rules will clearly set forth guidelines for compliance.

PROPOSED RULES
NEED AND REASONABLENESS

The need and reasonableness of the proposed rules are as follows:

CHAPTER ONE

GENERAL

TRE 1 Purpose. The rules and regulations contained in this subchapter are for the purpose of implementing provisions of the Unclaimed Property Law.

Rule 1. Minn. Stat. §§345.41(b)(5) and 345.56 provide for the adoption of rules in order to carry out the provisions of the Unclaimed Property Act. Those statutes read as follows:

M.S. 345.41(b)(5) "Report of Abandoned Property. This report shall be verified and shall include: (5) other information which the state treasurer prescribes by rule as necessary for the administration of 345.31 to 345.60."

M.S. 345.56 "Rules and Regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 345.31 to 345.60."

TRE 2 Service charges. The term "service charges" means any type of charge deducted by a holder (as defined in subdivision 5 of Minn. Stat. §345.31) from property subject to the Uniform Disposition of Unclaimed Property Act (Minn. Stat. §§345.31-345.60 inclusive, Laws of 1977, ch. 137), including, but not limited to charges imposed by virtue of the inactivity, dormancy, or abandonment of property such as service charges, handling charges, and administrative costs.

Rule 2. Service charges imposed on inactive or dormant accounts may be termed by the respective bank or financial institution as a dormancy charge, handling charge, administrative cost or other type of service charge. The practical effect of these charges, however, is the same, as each may reduce or eliminate the accounts on which they are imposed. It is therefore necessary that the definition of service charges be all-inclusive, in order that the rules governing service charges or the formation of contracts which provide for the leveling of such charges encompass the charges however characterized.

TRE 3 Property. The term "property" means any property that is reportable to the State Treasurer under the Uniform Disposition of Unclaimed Property Act, or would be reportable if service charges had not been deducted therefrom.

Rule 3. The definition of the term "property" clarifies the reference to any property reportable under the Uniform Disposition of Unclaimed Property Act, or which would be reportable if service charges had not been deducted. This rule provides that property which would be subject to service charging pursuant to a contract is also subject to the Unclaimed

Property Act and these rules. Because contracts providing for service charges have the potential of defeating the purpose of the Act, it is necessary to specify that the property included in those contracts are subject to these rules.

TRE 4 Inactivity. The term "inactivity" means nonoccurrence of any of the events or acts described in (1), (2), (3), (4) or (5) of Minn. Stat. §345.32(a) or (1), (2), (3), or (4) of Minn. Stat. §345.32(b).

Rule 4. It is during this period of inactivity that service charges are deducted from accounts or their interest is discontinued. This definition insures that the rules apply to the property holders specified in Sections 345.32(a) and (b) of the Unclaimed Property Act and to the definition of inactivity in those sections.

TRE 5 Deducted. The term "deducted" shall also be deemed to mean "excluding".

Rule 5. This definition makes the rules synonymous for deduction or exclusion of service charges.

CHAPTER TWO

SERVICE CHARGES LAWFULLY WITHHELD

TRE 6 Authority for service charges. Service charges shall not be deducted from property unless:

A. Expressly permitted by provisions of the Uniform Disposition of Unclaimed Property Act; and

B. Authorized by a statute other than the Uniform Disposition of Unclaimed Property Act or by a valid, enforceable contract which expressly provides for such charges and the terms of which are not inconsistent with the provisions of the Uniform Disposition of Unclaimed Property Act.

Rule 6. Rules 6A and 6B do not preclude service charges, but limit their deduction to two circumstances: 1) they are allowed by the Unclaimed Property Act, or (2) by another statute or by a valid and enforceable contract and the terms of which are not inconsistent with the Unclaimed Property Act.

The Unclaimed Property Act only specifically provides for the deduction of lawful service charges in certain limited instances (Sections 342.32(a), (b) and (c), 345.34 and 345.39). But certain property holders may be entitled to deduct such charges by virtue of other provisions of law.

It is necessary to specify the contract be valid and enforceable because the Treasurer's Office has found that many property holders have, or have the potential to, without an agreement with the customer, service charged accounts and taken their customers' money as their own income in lieu of reporting the same under the Unclaimed Property Act. In most instances these holders justify the noncompliance by reference to rules, regulations or other authorities unilaterally adopted by the holder and never brought to the attention of the customer.

TRE 7 Contracted service charges. For purposes of Minn. Stat. §§345.32(a), (b), and (c), 345.34, 345.39 and rule TRE 6B hereof, an agreement in order to constitute a "contracted service charge", "charges that may lawfully be withheld", or "valid enforceable contract" must satisfy the following conditions:

A. The agreement must be in writing and executed by the customer.

B. The agreement shall expressly provide on the face thereof the specific amount or method by which such service charges shall be calculated and in no event shall the terms thereof be unreasonable or unconscionable.

C. Any modification or supplement, or amendment to an agreement otherwise satisfying these regulations must be assented to in writing by the customer.

D. Such agreement shall otherwise comply with all Minnesota Statutes and Federal Statutes and regulations to which holders are subject.

Rule 7. This rule sets forth the requirements that shall be deemed to constitute an agreement allowing the deduction of service charges. Banking practices have been to impose service charges against inactive accounts and thereby to not report property otherwise subject to the Unclaimed Property Act or to greatly diminish the amount reported. Purportedly, the banks do this pursuant to an agreement with the customer. However, it has been found by the State Treasurer's Office that the customer is unaware of any such charges when he opens his account. In addition, any imposition of further charges or alteration to the original charges are not effectively communicated to the customer. Because these policies of service charging without proper notification to the depositor diminish important rights, the State Treasurer feels it imperative the depositor give them up knowingly, because the end result of this lack of knowledge is that depositors are losing their accounts and property which rightfully belongs to them is not being reported to the State Treasurer. The proposed requirements will ensure that at least the minimal standards constituting an

contract and notification to the depositor are met before a property holder takes its customers' funds.

A. Before service charges may be taken or interest discontinued, these practices have to at least be included in a written contract assented to by the customer so that he may be aware that service charges are a consequence should he allow his account to remain inactive.

B. The discontinuance of interest and the exact amount of the service charges or the precise means by which they are imposed have to be included in the contract with the customer. Presently, service charges, if they are included in the contract at all, are done so vaguely, by reference, or in such a manner that the amount of the charge cannot be determined by the customer without further study. The service charge should be included in the contract so that the customer may determine the financial impact of leaving his account inactive, and thus allow him to make an informed judgment in his dealings with the bank. Further, the amount of the charge should be included in the contract because banks do not permit the customer to bargain regarding the terms of the contract; and the courts have held that they will not enforce unconscionable provisions of an adhesion contract. It is well established that contracts with depositors must be reasonable. (Brunswick Corp. v. Northwestern Nat'l Bank, 214 MN 370, 375, 8 N.W.2d 333, 336 (1943).

C. This rule requires that any charges now being imposed or any alteration to the initial charges be effectively communicated with the depositor by requiring that he agree to them in writing. Presently, any further imposition of charges is not effectively communicated to the customer, for if any means of notification is used at all, it is a notice posted in the bank lobby, a method which in practice does not give effective notice to the depositor. Few, if any, of the affected account holders would have the opportunity to see the notice. Written notice to the customer and his assent make it possible for him to be aware that a substantial charge could be made to his account, particularly since service charges to dormant accounts have been increasing rapidly over recent years and have come to play an increasing part in the charges assessed against savings accounts. The notice gives the depositor the right to make an informed judgment in handling his account. It may encourage him to periodically reactivate it and keep in contact with the bank or to transfer his funds to a bank where the charges are less onerous. And if the charges are to be in keeping with a valid, enforceable contract, the customer must assent to the charge to his account in writing.

D. The agreement for service charges must also comply with all applicable state and federal statutes and regulations.

TRE 8 The provision "excluding contracted service charges which may be deducted for a period not to exceed one year" set forth in §345.32(a), (b) and (c) shall apply to all contracts entered into on or after July 1, 1977 and to all contracts entered into prior to July 1, 1977, the service charge provisions of which are amended subsequent to July 1, 1977.

Rule 8. In order to avoid any unconstitutional impairment of a contractual obligation entered into prior to the 1977 amendments, this rule clarifies the State Treasurer's position concerning contracts entered into after the effective date of the amendments.

TRE 9 Substantiation of deductions. If service charges are deducted from property, a holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. The citation of the statute or a copy of the form of contract authorizing such service charges.

B. The value or amount of each item of property, before any service charges are deducted therefrom.

C. The total amount of service charges deducted from each item and the date or dates on which such service charges were deducted.

D. Such other information or documentation as the State Treasurer may reasonably require to substantiate the deduction of service charges. Such documentation may include correspondence with customer, passbook provisions, signature card, rules and regulations, by-laws, and any other documentations concerning any agreement between the bank and the customer.

Rule 9. This rule will enable the Treasurer's Office to monitor the deduction of service charges by requiring the property holder to identify and justify the taking of such charges. Almost without exception banks, insurance companies, and other corporations have followed the practice of either not reporting an item of unclaimed funds belonging to a lost customer because they have taken the entire amount as a service charge or of reporting the item net of all such charges. Additionally,

corporations have simply credited to income their uncashed payroll checks, credit balances, uncashed vendor checks and unclaimed monies, notwithstanding that no contract exists with the lawful owner providing for such a practice. By requiring the holders to report the total amount of service charges and the authorization and substantiation of those charges, the Office of the Treasurer is able to contact each property holder and review individually its reporting practices in order to ascertain whether it is in compliance. This rule will ensure that a property holder using a reporting practice inconsistent with the terms of the Unclaimed Property Act will be monitored and compliance obtained.

By requiring the property holders to report the value of each item of property before the charges were deducted and therefore the names of the lawful owners, the State Treasurer will be enabled to publish their names and attempt to locate them. Since it is the practice of most property holders to waive the service charge for the customer should he come in and obtain his money, but not report such service charged accounts to the State Treasurer, hundreds of thousands of Minnesotans will receive their lost or forgotten funds because the State Treasurer will now be able to notify them of these funds. If the owner is not notified of the existence of these monies, it is virtually certain that the funds would remain lost and credited to the income of the property holder.

TRE 10 Waiver or non-enforcement of right. Service charges may not be deducted from property pursuant to a contract or statute if the holder would not have deducted such charges in the event the property had been claimed by the owner prior to being reported or remitted to the State Treasurer.

Rule 10. Almost without exception, banks in Minnesota and throughout the United States waive the service charges purportedly levied against savings accounts, trust items, money orders, certified checks, cashiers checks and other bank exchange items if the customer reactivates the account or cashes the item. This procedure is often followed even when there is a valid enforceable contract providing for service charges. It is also followed by other businesses who have credited their outstanding checks to income. Should the creditor cash the check, or have it reissued, he would receive the funds. Thus, by not including those items which have been service charged, the service charge is levied only on the State Treasurer of Minnesota, making it impossible for him to return all the monies to the rightful owners.

In Bank of America v. Cranston, 60 Cal. Rptr. 336, 252 Cal. App. 2d 208 (1967), the Court held that since the rights of the state are derivative, the rights of the owner of the presumed unclaimed monies accrue to the state. Thus the property holder may not waive its contractual rights against the owner and enforce those same rights as against the state. This case involved the banks' practice of waiving the statute of limitations on uncashed travelers checks.

Thereafter, the Superior Court of Sacramento County, State of California, in the case of Bank of America v. Kenneth Cory, State Controller, Case No. 257509, in an unreported memorandum opinion, ruled directly on the bank's practice of waiving service charges and recrediting interest to reactivated abandoned accounts. The Court held as follows:

> "Thus, the Court believes under the 'Derivative Principle' that the Controller stands exactly in the shoes of the depositor and he is entitled to all the benefits to which a depositor is entitled.
>
> "It follows that unless there are valid contracts to the contrary between the banks and their depositors, the banks may not make service charges or stop the accrual of interest on dormant savings accounts when the accounts are paid to the Controller.
>
> "Moreover, even if the depositors and the banks entered into such contracts, the banks may not seek to implement the terms of the contracts against the Controller when they do not against depositors who claim the deposits before they are paid to the State."

This rule specifically adopts the derivative principle, as noted in the above-referenced cases. The derivative principle, as statutory law and not case law, will be used to enforce the Treasurer's responsibility under the Unclaimed Property Act. This rule will be used to defeat another device, i.e., service charges, that appear to be affecting everyone, but in reality only affect the State Treasurer.

The Supreme Court of the State of Minnesota in State v. Northwestern Nat'l Bank, supra, similarly adopted the "derivative principle" in holding at page 575, ". . . it is equally clear that when it (Northwestern National Bank) is required to pay these funds to the state treasurer . . .

its obligation to the depositor is gone just as effectively as if the bank had been compelled to pay any attaching or garnishing creditor of the depositor" and at page 580, the Court adopted the waiver principle in holding as follows:

> "In all these years it (Northwestern National Bank) has never, so far as the record discloses, denied meeting its obligations to its depositors in whatever form that relationship was evidenced. It has never heretofore sought shelter under the statute of limitations. During all these years it has used these funds to and for its own advantage. No interest has been paid, nor is any sought. All obligations presently involved are even now carried as valid and appropriate liabilities in the conduct of its banking business."

TRE 11 Authority for discontinuance. If payment of interest or dividends on property subject to Minn. Stat. §§345.32(a) and (b) is discontinued at any time during the period of inactivity, the holder shall include or attach as part of the report filed pursuant to Minn. Stat. §345.41:

A. A copy of the form of a valid, enforceable contract which authorized such discontinuance of payment of interest or dividends; or

B. The citation of the statute which authorized such discontinuance of payment of interest or dividends.

Rule 11. Just as property holders service charge accounts, they frequently discontinue any interest or dividends on an account because of an account's inactivity. Meanwhile, the bank may be using the account's money to make money. This rule seeks to limit holders from applying this means of service charging. The two subsections, Rule 11A and 11B, will enable the State Treasurer to monitor such a practice of discontinuance of interest and obtain compliance.

By requiring property holders to include or attach a copy of the form of a valid, enforceable contract which authorized such discontinuance, or a citation of the statute which authorized such discontinuance of interest or dividends, the State Treasurer will be able to contact each property holder and review individually its reporting practices in order to ascertain whether it is in compliance. This rule will ensure that the property holder using a reporting practice inconsistent with the terms of the Unclaimed Property Act will be monitored and compliance obtained.

TRE 12 Non-Enforcement of right. A contract or statute shall not be considered as authorizing discontinuance of payment of interest or dividends if such payment would not have been discontinued, or would otherwise have accrued to the benefit of the owner, in the event the property had been claimed by the owner prior to being reported or remitted to the State Treasurer.

Rule 12. In addition to service charges only being deducted from items reportable to the State Treasurer, the Treasurer's Office has found that interest or dividends have similarly been withheld. This has consequently made it impossible for the Treasurer to return to the owners that which is rightfully theirs. Furthermore, just as interest or dividends are withheld from the owners of property, all other residents of Minnesota may be denied the full advantages of the money which has been abandoned until such time it is claimed. Similar to Rule 10, this rule explicitly incorporates the derivative principle and would be applied to the discontinuance of interest or dividends (Bank of America v. Cranston, 252 C.A. 2d 208, 60 Cal. Rptr. 336, 1967).

This rule will prevent this discontinuance of interest from being levied only against the State Treasurer if the full amount of the property would have been returned to the owner. It thereby enables the State Treasurer to inform owners of the full amount to which they are entitled.

TRE 13 Reporting period. The provisions of Minn. Stat. §§345.32(a) (4) and (5) and (b) (4) are effective as of July 1, 1977. Unless such sections are satisfied subsequent to said date the property shall be reportable to the State Treasurer.

Rule 13. The 1977 amendments to Sections 345.32(a) and (b) added to the existing law conditions which prevented the property from being presumed abandoned. This rule makes clear that satisfaction of those conditions must occur subsequent to the effective date of the amendments. It is necessary for property holders to establish an accurate and controllable means of monitoring abandonment of property by the owner because without such control, an account which has not been active may be misclassified as abandoned.

TRE 14 Receipt of statement. For purposes of Minn. Stat. §§345.32(a) (4) and (b)(4), a tax report or regular statement of deposit shall be deemed to be "the statement" referred to in said sections.

Rule 14. The 1977 amendment to Section 345.32(a) adding paragraph (4) thereto was thought by numerous banks to be ambiguous in that the reference in the second sentence to "the statement" did not specifically make reference to "tax reports" described in the first sentence of said paragraph (4). At the request of the banks this rule is proposed in order to clarify and set forth the obvious intent of the section.

TRE 15 Negative property report. A person who has no property which is reportable pursuant to the Uniform Disposition of Unclaimed Property Act shall report that fact if so requested in writing by the State Treasurer.

Rule 15. This rule will enable the State Treasurer to monitor compliance with the Unclaimed Property Act by requiring a nonreporting property holder to verify in writing that it holds no reportable property. Without such a rule the Treasurer's Office is unable to ascertain whether the failure of a holder to report is because it holds no abandoned property or, as is more often the case, because it is either unaware of the law or intends not to comply with it.

exhibit #10(a)

The following documents will be submitted in support of the foregoing Rules and the Statement of Need and Summary of Evidence.

A Report Relating to Minnesota's Unclaimed Property Act

Report Relating to Holders Subject to Minnesota's Uniform Disposition of Unclaimed Property Act and Their Reporting Practices Thereunder

Report on Bank Policies on Dormant Accounts

Copies of Reports of Unclaimed Property which illustrate the effects of service charging and discontinuance of interest

Summary of specific bank's practices with respect to service charges and waiver and copies of their passbooks and provisions relating to such policies

Opinions issued by the Attorney General in 1940 and 1942 regarding the lawfulness of service charges

exhibit #10(b)

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY GOVERNING MINNESOTA UNCLAIMED PROPERTY ACT

NOTICE OF CITATIONS

Date of Hearing: March 20, 1978

Peter C. Erickson, (612) 296-8118, Hearing Examiner

TO THE HEARING EXAMINER:

You are advised that the citations named below will be used in the hearing.

1) State v. Northwestern National Bank, 219 Minn. 471, 18 N.W. 2d 569 (1945)

2) Brunswick Corp. v. Northwestern National Bank, 214 Minn. 370, 8 N.W. 2d 333 (1945)

3) Bank of America v. Cranston, 60 Cal. Rptr. 336, 252 Cal. App. 2d 208 (1967)

4) Bank of America v. Kenneth Cory, State Controller, Case No. 257509 (1976)

5) Attorney General Opinion, March 28, 1947

6) Attorney General Opinion, June 11, 1940

7) Minn. Stat. ch. 345.31 - 345.60

8) Minn. Stat. § 48.521 - 48.528 (1944)

9) Laws of 1937, ch. 358, §§ 1 - 7

February 23, 1978

exhibit #10(c)

STATE OF MINNESOTA

STATE TREASURER, DIVISION OF UNCLAIMED PROPERTY

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE STATE TREASURER, DIVISION
OF UNCLAIMED PROPERTY GOVERNING MINNESOTA
UNCLAIMED PROPERTY ACT

Date of Hearing: March 20, 1978

Peter C. Erickson, (612) 296-8118, Hearing Examiner

TO THE HEARING EXAMINER:

The parties named below will appear at the above hearing on behalf of the State Treasurer.

Jim Lord, State Treasurer
Georgia Johnson, Director, Division of Unclaimed Property
Timothy Gadler, Audit Director, Division of Unclaimed Property
Randall LaFoy, Intern, Division of Unclaimed Property
Christopher R. Kelley, Special Assistant Attorney General
Thomas Fraser, Special Assistant Attorney General
David Epstein, Consultant to Division of Unclaimed Property
If need arises, Mr. Epstein will also testify as an expert witness on general banking practices, service charges, and interest on dividends.
Anthony Andreoli, Consultant to Division of Unclaimed Property
If need arises, Mr. Andreoli will testify as an expert witness as to bank examining for abandoned property.

February 23, 1978