



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Jesse James  
State Treasurer  
Austin, Texas

Dear Mr. James:

Opinion No. O-5780

Re: Status and disposition of money now held by the State Treasurer in the dissolution of solvent State banking institutions, under Article 540 of the Revised Civil Statutes.

Your request for an opinion upon the above captioned subject matter is as follows:

"In the Dissolution of Solvent Corporations, Fund No. 31, the State Treasurer holds \$14,859.57 deposited under Article No. 540, to the credit of depositors and/or stockholders of various corporations, whose whereabouts were unknown at the time of liquidation.

"The Texas Banking Code of 1943, incorporated in House Bill No. 87 as passed by the 47th Legislature, appears to supersede and repeal all previous Articles and Acts by which authority the State Treasurer holds the above described funds.

"We respectfully request your opinion on the following questions:

"1. Should all or any part of the \$14,859.57 now held by the State Treasurer in the Dissolution of Solvent Corporations Fund be transmitted to the State Banking Commission?

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"2. Should the State Treasurer's records, including ledgers, depositors and/or stockholders list, together with correspondence pertaining to same be surrendered to the State Banking Commissioner?"

"3. If your answer to the foregoing questions be in the affirmative, is the State Treasurer relieved of all future responsibility in regard to the above accounts?"

Article 540 of the Revised Civil Statutes deals with the question of final settlement of State banking institutions in the process of voluntary liquidation, and so far as pertinent here is as follows:

" \* \* \*. Within six months after the filing of such certificate, the corporation shall pay all sums due depositors and creditors whom they can discover and who claim the moneys due them; and upon the expiration of said six months, it shall be the duty of the corporation to make a statement from the books of said corporation, certified by the president and secretary, of the names of all depositors and creditors who have not claimed or have not received the balances to their credit or due them respectively, and to file the same with the State Treasurer and to pay the said State Treasurer all such unclaimed deposits, moneys and credits for the use and benefit of such depositors and creditors. The board of directors shall then divide the capital stock, guaranty and indemnity fund and all other assets or the proceeds thereof among the stockholders ratably; and the board of directors shall thereupon file in the office of the Banking Commissioner a certificate surrendering the corporate franchise."

This Article was a part of Title 16 of the Revised Civil Statutes of 1925, and, as you say, has been repealed by the comprehensive Act of the 48th Legislature, known as Texas Banking Code of 1943, and is therefore no part of the present statutes.

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It was entirely within the province of the Legislature to repeal this Article, as it did, but such repeal did not have and could not have the effect to disturb private property rights that had become fixed thereunder while the Article was an existing statute. Such rights are known as vested rights and are, of course, beyond legislative interference. The moneys mentioned by you having been deposited with the State Treasurer, in pursuance of the terms of Article 540 while it was an existing law, thereupon vested in the owners of such funds as a fixed and definite private right, entirely personal in its nature. The Texas Banking Code of 1943 did not attempt to interfere in any way with such vested property rights, so that they remain precisely as they became when the deposits were made.

While Article 540 has been repealed, the statutory trusts that were created under that Article in the process of voluntary liquidations of banking institutions have not been destroyed, but on the contrary have been respected.

In Article 15 of Chapter VIII of the Banking Code, there is this provision:

"All unclaimed dividends and all funds hereafter available for non-claiming depositors and creditors, together with all funds held pursuant to the provisions of Article 540 of the revised Civil Statutes of Texas, (which latter funds shall be transmitted by the State Treasurer to the Commissioner, together with a list of the depositors and creditors for whose benefit the same is held), shall be deposited by the Commissioner in one or more State banks for the benefit of the depositors and creditors entitled thereto."

Thus, the Legislature respecting the trust has merely changed the trustee from State Treasurer to banking Commissioner, a thing it had full power to do. (Security Savings Bank v. The State of California, (U.S) 68 Law ed. 301, 31 A. L. R. 391).

So that, your questions are answered categorically as follows:

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1. All of the funds mentioned by you should be transmitted to the State Banking Commissioner.

2. There should accompany this transmission "a list of the depositors and creditors for whose benefit the same is held", and this list should of course include the respective amounts due to such depositors and creditors, and likewise the bank making the deposit. The Treasurer should not transmit to the Commissioner the records, ledgers, lists and correspondence pertaining to same, since they constitute a part of the permanent archives of his office. Those lists transmitted to the banking Commissioner should be certified under the hand and seal of the State Treasurer.

3. The transmission by the State Treasurer to the Banking Commissioner of the lists mentioned in Answer 1 relieves him of all future responsibility and liability in regard to the trust previously being administered by him.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPRO  
OPINION  
COMMITTEE  
BY *Bl*  
CHAIRMAN