Memo 1995-27 Unclaimed property; abandonment periods; money orders

To: All State Chartered Banks
From: Amy Johnson, Legal Assistant
Date: November 2, 1995

Re: Unclaimed property; abandonment periods; money orders

Approximately two months ago, the State Treasurer's Office distributed information regarding the above mentioned topic. Apparently, two of the documents conflicted with each other regarding the abandonment time periods contained in the Uniform Unclaimed Property Act (UPA), K.S.A. 58-3934 et seq. This memo is intended to eliminate possible confusion about abandonment periods relating to personal money orders versus bank money orders.

This confusion may have been created by the following language in K.S.A. 58-3937(e):

> "'money order' means a money order issued by a business association and includes a personal money order or other similar instrument issued by a banking or financial organization, but not a bank money order, which is deemed a cashier's check."

Unfortunately, the UPA fails to provide a definition which distinguishes a "bank money order" from a "personal money order or other similar instrument issued by a banking or financial organization".

In general, as stated in B. Clark, The Law of Bank Deposits, Collections and Credit Cards, ¶1.05[15] (Revised ed. 1995)

> "A money order calls for a payment to a named payee. There are three parties to a money order: the drawee, the remitter, and the payee. Particularly for purposes of stopping payment, the courts have distinguished between two kinds of money orders (1) a 'bank money order', which is really a cashier's check by another name, and (2) a 'personal money order, issued by and drawn upon a bank or nonbank without indication of either remitter or payee. There is no right to stop payment on a bank money order, while the remitter can stop payment on a personal money order."

In regard to bank money orders, *Id*. at ¶3.06[3][d][I] states:

> "Bank money orders are obligations executed by the bank itself, in the nature of promissory notes with the bank as maker. They should be treated as cashier's checks."

and H. Bailey, Brady on Bank Checks, The Law of Bank Checks, 1.21 (7th ed. 1992) states:

> "Bank money orders are a form of money order issued and sold by banks...bank money orders are practically a modified form of cashier's check, and may be indorsed any number of times. Bank money orders are signed on behalf of the issuing bank."

B. Clark, *supra*, at ¶3.06[3][d][ii] in regard to personal money orders states:

> "This instrument, issued by and drawn upon a commercial bank without indication of either purchaser or payee, is often used as a checking account substitute by the purchaser-remitter. A personal money order

> is not signed in any place by an authorized representative of the issuing bank, though the bank's name appears as drawee. Because the bank has not 'signed' the instrument, it is not liable under it."

In summary, a bank money order is a "direct obligation" of the bank and is usually signed by an agent of the bank, such as a cashier's check. A personal money order is not signed by the bank, and not an obligation of the bank issuing it. The bank is nothing more than a drawee on a personal money order.

We contacted the State Treasurer's Office to verify the correct abandonment time periods and to confirm that our interpretation of bank and personal money orders was accurate. Jolana Pinon, Assistant State Treasurer, verified the following determination as accurate.

K.S.A. 58-3937 states money orders have an abandonment period of 7 years. Our interpretation is that this provision <u>only</u> applies to personal money orders. K.S.A. 58-3938 assigns a 5 year abandonment period for cashier's checks. Bank money orders are "direct obligations" of the bank, and should be treated as cashier's checks. Therefore, according to the provisions of the UPA, the correct abandonment period for a bank money order is 5 years.