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LEGISLATION

Disposition of Unclaimed Dividends and Shares—Distributions from Interstate Business Associations

In recent years the cost of state government has been spiraling upwards. In order to meet these expenses the states have sought new sources of revenue outside the common tax sources. One source that is receiving increased attention is unclaimed dividends and shares of stock.[1] Some large corporations hold thousands of dollars in declared dividends which they cannot deliver because they are unable to locate the stockholders entitled to them.[2] Once having declared a dividend a corporation is said to be a debtor to its stockholders and to hold the dividend as a fiduciary.[3] As a fiduciary the corporation must maintain a separate account and be ready to pay the dividend on demand of a stockholder. Under the majority view that the statute of limitations on a stockholder's claim to a dividend does not begin to run until the owner demands it,[4] the funds may be tied up in frozen account almost indefinitely. The corporation often has difficulty in securing approval of charter and by-law amendments, since such changes often require approval by all, or more than a majority of the outstanding shares of the corporation, including stockholders of record it is unable to locate.

Current Responses

Two types of responses to this problem have been developed: (1) corporate charter and share contract provisions, and (2) state escheat statutes. Some corporations have written into their share contracts

1. Under general escheat laws New York has claimed $38,500,000 in thirteen years; Michigan has collected $7,500,000 in ten years; Pennsylvania has escheated $5,000,000 in seven years. The amount of property returned to the true owners runs less than ten percent of the amount collected, and the cost of running the state escheat department is only two to two-and-one-half percent of the gross proceeds. While these figures cover property other than stocks and dividends, it is apparent that corporate escheat laws can produce substantial amounts of revenue especially in the first year. Massachusetts collected $2,500,000 in the first year, and California has estimated that it can collect from thirty to one hundred million dollars in the first year with a yearly average of five million thereafter. McBride, *Unclaimed Dividends, Escheat Statutes and the Corporate Lawyer*, 14 Bus. Law 1062, 1066-68 (1959).

2. One corporation is reported as holding $180,000 in unclaimed dividends and $200,000 in unclaimed dividend checks, not to mention the value of the stock that underlies these dividends. *Id.* at 1062. See also Note, 65 Harv. L. Rev. 1408, 1416 n.48 (1952).

3. *E.g.*, Holly Sugar Corp. v. Wilson, 101 Colo. 511, 75 P.2d 149 (1937); Yeaman v. Galveston City Co., 106 Tex. 389, 167 S.W. 710 (1914); Cavitt v. Amsler, 242 S.W. 246 (Tex. Civ. App. 1922). *But see* 11 Fletcher, Cyclopedia Corporations § 5370 (Perm. ed. rev. repl. 1958); Lattin & Jennings, Cases on Corporations 1088 (3d ed. 1959).

4. See authorities cited note 3 *supra*.

provisions that dividends and shares will revert to the corporation after the passage of a certain number of years during which there has been no communication by the shareholder with the corporation. Also some corporations have amended their charters to allow the corporation to reclaim dividends and to sell the stock if the original owner does not claim the funds or communicate with the corporation within a stated time.[5] However, where a state wishes to escheat these funds the corporation must give way. The legislature through its reserved powers can forbid such a provision in the charter of any domestic corporation. A recent New Jersey decision held a charter provision which allowed the corporation to take unclaimed funds invalid on the grounds that it was against the public policy expressed in the state escheat statute.[6]

Starting with Pennsylvania in 1915, the states have also sought to claim these shares and attendant dividends under state escheat statutes; at the present time twenty-three states have such statutes.[7] These statutes require a person holding property that is unclaimed for a stated number of years to report that fact to the state. The state, giving notice to the owner by publication, then takes custody of such property.[8] The statutes allow the state to sell the stock underlying

5. A New Jersey corporation passed a charter amendment that allowed it to escheat unclaimed dividends after three years absence of the owner. However, the New Jersey court declared this act to be a violation of the public policy expressed in the state seven year escheat law. State v. Jefferson Lake Sulphur Co., 36 N.J. 577, 178 A.2d 329 (1962).

6. *Ibid.*

7. PA. STAT. ANN. tit. 27 §§ 241-301 (1958). States which have general escheat laws which include intangible dividends and stocks held by a corporation areas follows: ALASKA COMP. LAWS ANN. §§ 09.50.070 -.160 (1962); ARIZ. REV. STAT. ANN. §§ 44-351 to -378 (1956) (UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT) [hereinafter citd as UNIFORM ACT]; ARK. STAT. §§ 50-601 to -612 (Supp. 1963); CAL. CIV. PROC. §§ 1500-27 (Deering 1961) (UNIFORM ACT); CONN. GEN. STAT. REV. 3-56a to -75a (Supp. 1963); FLA. STAT. ANN. §§ 717.01 to -30 (Supp. 1963) (UNIFORM ACT); IDAHO CODE ANN. §§ 14-501 to -530 (Supp. 1963) (UNIFORM ACT); ILL. ANN. STAT. ch. 141, §§ 101-130 (Smith-Hurd 1963) (UNIFORM ACT); KY. REV. STAT. ANN. §§ 393.010 to -.990 (1963); MASS. ANN. LAWS ch. 200A, §§ 1-17 (1955); MICH. STAT. ANN. §§ 26.1053(1) to .1054(6) (1953); MONT. REV. CODES ANN. §§ 67-2201 to -2230 (Supp. 1963) (UNIFORM ACT); N.J. STAT. ANN. §§ 2A:37-11 to -44 (1952); N.M. STAT. ANN. §§ 22-22-1 to -29 (Supp. 1963) (UNIFORM ACT); N.Y. ABAND. PROP. LAW §§ 101-1502; N.C. GEN. STAT. §§ 116-20 to -26 (1960) (all escheated property goes to the University of North Carolina); ORE. REV. STAT. §§ 98.302 to -.436 (1963) (UNIFORM ACT); PA. STAT. ANN. tit. 27, §§ 241-301 (1958); TEX. REV. CIV. STAT. art. 3272a (Supp. 1963); UTAH CODE ANN. §§ 78-44-1 to -29 (Supp. 1963) (UNIFORM ACT); VA. CODE ANN. §§ 55-210.1 to -.29 (Supp. 1962) (UNIFORM ACT); WASH. REV. CODE ANN. §§ 63.28.070 to -.920 (1961) (UNIFORM ACT); WYO. STAT. ANN. §§ 9-685 to -692 (1959). The basic escheat statute of Wyoming reads as follows: "All property, real and personal, within the limits of this state, which does not belong to any person, belongs to the state." WYO. STAT. ANN. § 9-867 (1959).

8. The Uniform Act requires holders of property who have not claimed it or corresponded with the holder for seven years to report this property to the state treasurer who must within 120 days file notice of the state's claim by publishing a list of the

the unclaimed dividends and require the state to hold funds to cover expected claims from the owner. Usually about twenty per cent of the total amount in custody is retained to pay claims and the rest is paid into the state's general treasury.[9] Some states will hold funds subject to the owner's claims indefinitely.[10] The rest hold funds subject to the owner's claims for only a few years.[11] Many state escheat statutes are broadly drawn and use a variety of connections with the stockholders or the corporation as bases of the right of the state to claim the property. Thus these states may claim the stock and dividends of lost shareholders if the corporation is a domestic one, or if it does business in the state, or if the stockholder's last known residence was in the state.[12]

CONFLICT OF LAWS PROBLEM AND JUDICIAL RESPONSE

Where the corporation is a domestic corporation of state *A* and does business in State *A* only, and the stockholder is likewise last listed as residing in state *A*, there is little difficulty in state *A*'s seizing the unclaimed property. However, the large corporations which have appreciable unclaimed dividends are usually incorporated in one state, do business in many other states, and have stockholders residing in still other states. As a result all three classes of states may lay claim to the same unclaimed dividends.[13] Where several states have jurisdiction over the corporation a severe conflict of laws problem arises, and a corporation holding such property may find itself subject to the claims of several states to the same property. Various cases have sustained the right of states based on each of the connections mentioned above to claim these funds. The Supreme Court of the United States upheld in one case the claim to dividends of the state of incorporation,[14] and in another the right to unclaimed life insurance policies of the state where the policies were issued and where the

property in a paper of general circulation in the county where the owner last resided or, if he did not reside in the state, in the county where the holder has his principal place of business. The act also requires that notice be mailed to the last known address of the owner if the property is valued at more than twenty-five dollars. UNIFORM ACT §§ 5,12.

9. McBride, *supra* note 1, at 1064. However, the Uniform Act requires that the state treasurer retain $25,000 to pay claims and that all in excess of this amount goes into the general treasury. UNIFORM ACT § 19.

10. See note 7 *supra* for states having the Uniform Act, which provides that the owner may claim his property at any time. UNIFORM ACT § 19.

11. *E.g.*, CONN. GEN. STAT. REV. § 3.70a (Supp. 1963) provides a twenty year period; PA. STAT. ANN. tit. 27, § 301 (1958), provides ten years within which to make a claim; N.J. STAT. ANN. § 2A:37-28 (1952), allows only two years to make a claim.

12. *E.g.*, PA. STAT. ANN. tit. 27, § 241 (1958); N.J. STAT. ANN. § 2A:37-13 (1952).

13. Note, *Escheat of Corporate Dividends*, 65 HARV. L. REV. 1408 (1952).

14. Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951).

insured was last known to have resided;[15] and the Supreme Court of Michigan upheld the claim to dividends of the state where the corporation did substantial business.[16] Thus the state escheat statutes often result in what has been called a "race of diligence" with the state making the first claim prevailing over other states.

However, in *Western Union Telegraph Co. v. Pennsylvania*,[17] a case involving a different kind of property, that is, money deposited with a telegraph company for transmission, the Supreme Court denied Pennsylvania, the state where the corporation received the money orders, the right to claim the property when New York, the state of incorporation of the company, was also claiming the funds. The basis of the decision was that since two states claimed the same property and neither was subject to the jurisdiction of the courts of the other, it was not assured that the Pennsylvania judgment would be given full faith and credit in New York. Thus the risk that the telegraph company would be subjected to double escheat would entail a taking of property without due process.[18] The Court suggested that since the telegraph company could not interplead the conflicting state claims, due to the eleventh amendment, the state should bring an original action in the Supreme Court under article III of the Constitution.[19] It is recognized that only one state can claim the funds held by a corporation. But since every state seeks to claim all the property it can, and since a party cannot interplead a state, there is a risk that a later state court will declare a judgment of its sister state invalid for lack of jurisdiction and demand payment of the same funds.[20]

The *Western Union* case[21] may indicate that the Supreme Court has modified its five-to-four decision in *Standard Oil Co. v. New Jersey*,[22] and thus will refuse to allow any state to claim intangibles unless it is assured that no other state will claim the funds. A state may insure this either by bringing an original action in the Supreme Court, or by submitting to the jurisdiction of the other claiming

15. Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948).
16. Schoener v. Continental Motors Corp., 362 Mich. 303, 106 N.W.2d 774 (1961).
17. 368 U.S. 71 (1961).
18. *Id.* at 75.
19. *Id.* at 77-80.
20. *Id.* at 75. *Cf. In re* Dorrance's Estate, 115 N.J. Eq. 268, 170 Atl. 601 (1934), *aff'd*, 116 N.J.L. 362, *cert. denied*, 298 U.S. 692 (1936). In this case the New Jersey court held a Pennsylvania judgment that Dorrance was domiciled in Pennsylvania erroneous and imposed a New Jersey estate tax on the estate. New Jersey in declaring the Pennsylvania judgment invalid refused to allow any credit against the New Jersey tax on the grounds that the Pennsylvania taxes did not have to be paid and the statute did not allow a credit for taxes paid under an invalid claim. There is a real danger that the same thing could happen with escheat statutes.
21. 368 U.S. 71 (1961).
22. 341 U.S. 428 (1951).

state.[23] Following the *Western Union* decision, Texas brought such a suit against New Jersey and other states in the Supreme Court in an effort to adjudicate the claim of the states to abandoned stock and dividends of the Sun Oil Co., a multistate corporation.[24] This pending case will give the Court an opportunity to lay down some guidelines for determining which state should escheat such funds.

THE NEED FOR A LEGISLATIVE SOLUTION

Even if the Court does set out some guidelines, the case law method is a slow and expensive way to settle such complex problems.[25] The Court is limited by the factual situation presented by each case, and it will take several years for the Court to decide enough cases to lay down adequate guidelines for disposing of state claims. During this period corporations would be subjected to numerous state claims and would be burdened with litigation expenses in order to prevent double escheat. Legislation would prevent this unnecessary confusion and expense. Any legislation in the area should determine which of several conflicting states has the best claim to abandoned dividends and shares and then give that state an exclusive right to the property.

STATE OF RESIDENCE

The state in which the shareholder last resided claims the abandoned dividends and shares on the following grounds: (1) that the property will be used for the benefit of the entire state, and the owner, being a resident, will share in that general benefit; (2) that since the resident owner would have probably spent the funds and been taxed on them in that state, the funds should be used to support the state; (3) that the state where the owner last resided will have the best opportunity to give him notice of his lost property and to return it to him; (4) that this state would not be difficult to determine, since an examination of the corporate books would list the last address of the owner; and (5) that this method would allocate the property on the basis of population, which is the fairest method of distributing property to the several states.

There are some disadvantages to the claims of the state of residence. First, the stockholder has disappeared and there is no assurance that he is still a resident of the claiming state. Second, the state must

23. Note, 62 COLUM. L. REV. 708 (1962); 15 VAND. L. REV. 1016 (1962).

24. Texas v. New Jersey, 369 U.S. 869 (1962); at last report the findings of the special master had been received by the court. 372 U.S. 973 (1964). However, no decision was handed down this term.

25. Texas v. New Jersey, *supra* note 24, has been in the Supreme Court for over two years and it was brought as an original action in that court. See also Note, 62 COLUM. L. REV. 708, 712-16 (1962).

obtain service of process over the corporation to have an escheat judgment valid against the corporation and the corporation may not have the minimum contacts with the claiming state essential to jurisdiction.[26]

State of Incorporation

The state of incorporation may claim escheat rights on the following grounds: (1) that it will always have jurisdiction over its domestic corporation; (2) that, since there is only one state of incorporation, there is no danger of multiple escheat; (3) that the claim can be easily handled from the administrative level by an examination of the corporate books; and (4) that the state gives the corporation life and its laws govern all relationships between the corporation and the shareholders.

There is a major defect in the claim of the state of incorporation. Many corporations maintain only a resident agent with a set of corporate books in the state of their incorporation and do little or no business within the state.[27] Thus states that are favored as places to incorporate because of less restrictive incorporation laws, such as Delaware and New Jersey, would secure windfall gains by being allowed to claim funds from corporations that do little business and have few stockholders within the state.

State of Principal Place of Business

The state where a corporation has its principal place of business may claim the abandoned property on the ground that it has the most substantial contact with the corporation. The corporation earns the dividends from business activities within the state and that state should have the benefit of such funds if the real owner cannot be found. A state clearly has jurisdiction over a corporation doing substantial business within its borders.[28]

Unfortunately, the problems created by trying to give the funds to this state are difficult and complex. Many corporations do an almost identical amount of business in several states. The determination of which one of these states is the corporation's principal place of business would be exceedingly difficult, as an examination of a

26. McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Pennoyer v. Neff, 95 U.S. 714 (1877). For an extended discussion of the jurisdictional problems caused by corporate escheat see Comment, 59 Mich. L. Rev. 756 (1961).

27. In Standard Oil Co. v. New Jersey, *supra* note 22, the company did no business in the state of incorporation other than maintain a resident agent with a set of corporate books. *Id.* at 437.

28. Forkosch, Constitutional Law 411-14 (1963).

few state taxation cases shows.[29] Also one state might dispute the decision of a sister state in determining the location of the principal place of business. Since this determination would have been the basis for jurisdiction of the first state's escheat judgment, if a second state found itself to be the principal place of business, such state would not be bound to give the judgment of the first state full faith and credit.[30] Such a situation would create a serious risk of double escheat, and any workable solution to this complex problem must allow an interstate corporation to pay one claiming state without the risk of later being subject to a second claim on the same property.

SUGGESTED SOLUTION

On balance it is suggested that the state of the shareholder's last residence be given priority for the following reasons. Any attempt to use the principal place of business of a corporation as the criterion would create more problems than it would solve or than the size of the unclaimed property held by one corporation would justify. Similarly, it would involve too much expense to try to apportion the abandoned funds among all the claiming states. On the other hand, giving priority to the state of residence would appear to reach a more equitable result in the long run than allowing the states of incorporation to prevail, since the latter alternative would tend to concentrate the funds in a few states whereas the former would spread the funds out more on the basis of population.[31] However, in cases where the state of the shareholder is unable to claim such property, the state of incorporation should be allowed to claim it so that there will be complete disposition of the abandoned property.

29. See, *e.g.*, Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936). The problem is similar to the determination of a decedent's domicile for the purpose of state death taxes. See, *e.g.*, *In re* Dorrance's Estate, *supra* note 20, followed by Texas v. Florida, 306 U.S. 398 (1938), where the states did bring an original action in the Supreme Court to settle their tax dispute. In this case the total claims of the states exceeded the value of the estate.

30. The Supreme Court by way of dictum in a recent case has alluded to the problem of binding a state not a party to a suit when it said, "it is to be emphasized that all that was ultimately determined in the Nebraska litigation was title to the land in question as between the parties to the litigation there. Nothing there decided, and nothing that could be decided in litigation between the same parties or their privies in Missouri could bind either Missouri or Nebraska with respect to any controversy they might have, now or in the future, as to the location of the boundary between them, or as to their respective sovereignty over the land in question." Durfee v. Duke, 375 U.S. 106 (1963). See also *In re* Dorrance's Estate, *supra* note 20; Comment, 59 MICH. L. REV. 756 (1961).

31. California has strict incorporation laws; therefore, on the basis of its population, would have relatively fewer domestic corporations than Delaware with its liberal incorporation laws.

SOURCES OF A LEGISLATIVE SOLUTION

There are two possible sources of such legislative action—state and federal. The Uniform Act for Disposition of Unclaimed Property[32] provides that unclaimed property may be claimed by the state of incorporation or by the state where the lost sharcholder last resided (if the corporation does business in that state). The act further provides that where both of these states claim the same funds, the state where the stockholder last resided shall prevail.[33] However, the act requires that the two states have reciprocal provisions on this point. Hence, the state of incorporation, *A*, does not have to give way to any state of residence, *B*, unless state *B* would give way to state *A* under reverse conditions. It is apparent from the recent activities of the states and from leading articles on the subject[34] that states such as New Jersey and Delaware, which are favored as forums in which to incorporate, will not want to surrender their right to unclaimed dividends to states such as New York and California, which have a large number of resident stockholders. Thus it seems unlikely that the Uniform Act will achieve the uniformity which is necessary for the reciprocity section to end the conflicts problems.

A further disadvantage is that the Uniform Act might not end the conflicts problem even if it were uniformly adopted. The Act provides that the state where the shareholder resides may claim abandoned property that "is held or owing by a business association doing business in"[35] the state. The term "doing business" is difficult to define. An analogy to the taxation statutes imposing taxes on corporations doing business within a state shows the problems the courts have in deciding whether or not a corporation is doing business within a given state for the purpose of taxation.[36] The possibility exists that the state of the shareholder's last known residence might decide that a corporation is doing business within its borders and claim the abandoned property held by the corporation, while the state of incorporation might later decide that the corporation was not doing business in the first state, and thus, that that state had no basis for claiming the property, and that the property can therefore still be

32. This act was published in 1954 and has been enacted in ten states. 9A UNIFORM LAWS ANN. 142 (Supp. 1963).

33. UNIFORM ACT § 10.

34. In State v. Sperry & Hutchinson Co., 23 N.J. 38, 127 A.2d 169 (1960), New Jersey sought to escheat unredeemed Green Stamps. See also Ely, *Escheats: Perils and Precautions*, 15 BUS. LAW 791 (1960); McBride, *supra* note 1; Note, 62 COLUM. L. REV. 708 (1962); Note, 65 HARV. L. REV. 1408 (1952); Note, 62 HARV. L. REV. 295 (1948).

35. UNIFORM ACT § 5.

36. HELLERSTEIN, STATE AND LOCAL TAXATION, 176-78 (2d ed. 1961). The notes on these pages show the prodigious amount of litigation that this one clause has produced.

escheated to the state of incorporation. In such a case a corporation could be subjected to double escheat even under the Uniform Act.

In view of the difficulty of securing a state's adoption of a Uniform Act which could work to its disadvantage, some authorities have urged federal legislation.[37] They have suggested that Congress, under the authority of the commerce clause of the Constitution, should enact a statute that would govern cases in which there might be a conflict among two or more states over unclaimed funds. Since almost all such transactions would involve interstate corporations, or interstate transactions, or the mails, there should be no question of congressional power to determine which of several states would have exclusive claim to such property.[38]

Thus Congress could enact a law which would escheat the funds to the United States unless the funds were claimed by the state of the stockholder's last residence or, if that state were unable to obtain jurisdiction over the corporate holder, by the state of incorporation. It is evident that those states entitled to claim the property would enact laws to do so.[39] Those states not entitled to claim would lose their incentive to try to win the "race of diligence" and the conflicts problem would be greatly reduced. Such a statute would not result in any substantial amount of property escheating to the United States, but it would encourage a uniform escheat law in the several states.

Since the Uniform Act is in force in ten states at present,[40] the federal act should use the priority of claims that it sets up. However, instead of allowing the state of the stockholder to claim when the corporation is "doing business" it is submitted that a better rule would be to allow that state to claim only when the corporation is registered to do business. The criterion of "doing business" is subject to the objections discussed above. However, and most states require a corporation to register with the state if it does business in the state.[41] Hence, by use of the registration requirement it would be a simple

37. See articles cited in note 34 *supra*. However, the authors are generally pessimistic about such legislation being enacted.

38. Wickard v. Filburn, 317 U.S. 111 (1942), shows how far the commerce clause can be extended. Section 5(a)(1) of the Securities Act of 1933, 48 Stat. 77 (1933), 15 U.S.C. § 77e(a)(1) (1958), regulates any sale of a security that "make(s) use of any means or instrumentality of transportation or communication in interstate commerce or of the mails . . . ." It would not be any extension to hold that by this same power Congress had the power to escheat corporate funds. See also FORKOSCH, CONSTITUTIONAL LAW 192-218 (1963).

39. Ely and McBride, *supra* note 34, both stress the great increase in state activity to claim this property. Also, after the Congress passed the estate tax credit for the states, INT. REV. CODE OF 1954, § 2011, almost all the states enacted death taxes to take advantage of the credit.

40. See statutes cited in note 7 *supra*.

41. *E.g.*, ABA-ALI MODEL BUS. CORP. ACT § 99 (1953).

matter to determine whether or not the state had jurisdiction over the corporation for the purposes of the escheat statute. Such a federal act would not require those states which have adopted the Uniform Act to change their laws substantially and would give the other states an easy model to follow if they wished to modify their laws to claim the abandoned property alloted to them by Congress.

PROPOSED STATUTE

The following federal statute is suggested as one way to secure fairness and uniformity among the states:

UNDISTRIBUTED DIVIDENDS AND DISTRIBUTIONS OF INTERSTATE BUSINESS ASSOCIATIONS.

(a) Any stock or other certificate of ownership, or any dividend, profit, distribntions, interest, payment on principal or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder or a participating patron of a corporation, who has not claimed it or corresponded in writing with business association concerning it within seven years is presumed abandoned and subject to escheat to the United States under the provisions of this Act[42] if such business association is engaged in interstate commerce or if the item so held or owing arose out of an interstate transaction[43] unless (1) it is held or owing by a business association registered to do business[44] in the same state as the records of the business association indicate the last known address of the person entitled thereto and such state claims escheat rights to said property; or (2) there being no state to qualify under subsection one, the property is held or owing by a business association incorporated in a state which claims escheat rights to said property.

(b) No other state shall have any right or claim to any property held by any business association subject to section (a).[45]

42. Other provisions of this act for notice and claims against the government for the property could easily follow the UNIFORM ACT §§ 1-32.

43. This wording is intended to give Congress power over any situation where there could be a possible conflict between two states over corporate funds.

44. Subsections (1) and (2) follow the priority for settling the conflict problem set out in the UNIFORM ACT §§ 5, 10. However, to prevent any possible conflict over the term "doing business" the term "registered to do business" is used. One state will always be able to escheat the funds. If the state of last known residence cannot secure jurisdiction over the corporate holder, or does not have a law claiming the property, then the state of incorporation can always claim under subsection (2). If that state does not have an escheat law then the United States will claim the property.

45. Section (b) insures that unless a state qualifies under section (a) it cannot lay any claim to property held or owing by an interstate corporation. Thus, the state of the corporation's principal place of business will not be able to claim unless the corporation is incorporated there or the stockholder last resided there as well.

Water Pollution–State Control Committee

The purpose of this note is to draft a model act establishing a state water pollution control committee. A brief statement of the water pollution problem in the United States will be followed by an examination and comparison of several existing state acts which establish central control committees. A draft of the proposed model act will conclude the note.

Water Pollution in the United States

> Pollution of our country's rivers and streams has, as a result of our rapid population and industrial growth and change, reached alarming proportions. To meet all needs–domestic, agricultural, industrial, recreational–we shall have to use and reuse the same water, maintaining quality as well as quantity. In many areas of the country we need new sources of supply, but in all areas we must protect the supplies we have . . . .[1]

This statement by John F. Kennedy, the late President of the United States, succinctly sets forth the causes and dimensions of the nation's water pollution problem. The problem is not new, but the rapid increase in population and the increased usage of water resources have served to underscore it for millions of Americans. The developments that have created and then aggravated the pollution problem are: (1) the relatively fixed amount of nature's supply of fresh water, (2) the uneven manner in which nature distributes the available water supply, (3) the rapid growth of population, industry, and commerce, which often do not locate where water is plentiful, (4) the concentration of population and industry in urban and suburban communities, (5) the enormous increase in water use by a rapidly growing population, industry, and agriculture, (6) the failure to construct sewage and industrial waste treatment facilities, and (7) the failure to maintain research and data collection systems capable of dealing with new and complex problems as they have emerged.[2] Probably the most significant of these developments is the increased use of water in the face of a fixed supply. The average rainfall in the United States is 30 inches a year, most of which is lost before it can be used. In terms of gallons this 30 inches amounts to about 4,300 billion gallons per day.[3] Hydrologists estimate that a maximum supply of 600-650 billion gallons a day can be impounded by reservoirs and other engineering devices.[4] Thus the supply is

1. Kennedy, *Special Message on Natural Resources, February 23, 1961*, in TO TURN THE TIDE 122 (Gardner ed. 1962).
2. Stein, *Problems and Programs in Water Pollution*, 2 NATURAL RES. J. 388, 390 (1962).
3. *The Water Pollution Control Program of the Public Health Service*, Public Health Service Publication No. 631, at 3 (1958).
4. Stein, *supra* note 2, at 391.

exhaustible.[5] The increasing use of water resources can best be illustrated by the following table showing the amounts that were used in 1960 contrasted with the projected amounts that will be necessary to adequately supply water needs in 1970 and 1980.

Fresh-Water Use[6]

1960	322.9 billions of gallons per day
1970	411.2 billions of gallons per day
1980	597.1 billions of gallons per day

Not reflected in these statistics is the growing demand for water to be used for recreational purposes. This is a non-consumptive use, but it requires large quantities of unpolluted water.[7] The only way to meet these increasing water needs is to reuse at least part of the fixed supply; before an appreciable amount can be reused, pollution must be controlled.[8]

The second most important development contributing to the pollution problem is the rapid growth of industry, particularly the chemical industry. Wastes originating within the synthetic chemical industry are extremely complex in composition and are either completely or partially unaffected by traditional purification methods.[9] These synthetic chemical wastes cause tastes and odors, and many of them are highly toxic to fish and other aquatic life. Most of them do not respond to biological treatment and remain in streams for long distances. Sanitation engineers and chemists do not know how to detect many of these compounds in water, nor do they know how to remove them. "We do not know the full effects of these wastes on water, either singly or in combination. Most important we do not know the long-range toxic effects of these new synthetics on man."[10]

The third significant factor—one that aggravates the problem by failing to meet the challenge cast up by the two developments discussed above—is the inadequacy of the scientific research being conducted in the area and the lack of systems for the collection of basic data relevant to water pollution.[11] The amount of money now being spent for basic research cannot support and sustain effective long-range programs.[12] Industry spends less than two million dollars each year on pollution research, and in 1962 the Public Health Service

5. *Ibid.*
6. Stein, *supra* note 2, at 395.
7. *Ibid.*
8. *The Water Pollution Control Program of the Public Health Service, supra* note 3, at 3.
9. Stein, *supra* note 2, at 400.
10. *Ibid.*
11. Stein, *supra* note 2, at 403, 404.
12. *Id.* at 403.

budget for direct research was only 2.4 million dollars.[13] Much of this money is misspent on research to improve traditional methods of purification, which are basically oriented towards the fields of sanitation engineering and bacteriology. The aim of this research should instead be the development of new methods of detecting impurities and of purifying water containing wastes from the synthetic chemical and petro-chemical processes.[14] Closely related to research and also essential to an effective attack on the pollution problem is a continuous program for collecting, evaluating, and disseminating basic data on water pollution.[15] The term "basic data" includes within its scope the sources, kinds, and amounts of pollution; the causes and effects of pollution; the kinds, costs, and effectiveness of treatment facilities; the costs and benefits associated with pollution control; and other similar engineering, scientific, and economic information.[16]

If it is conceded, as surely it must be, that the facts serve to demonstrate a need for some form of pollution control, the question then presented is by whom is this control to be exercised? The polluters themselves cannot be expected to take the initiative in working out effective control methods. To the largest group of polluters, private industry, pollution control is not "economical" from the standpoint of corporate profit, and industry generally is not concerned with aesthetic and recreational interests.[17] Experience has shown that privately initiated suits are incapable of effectively abating pollution.[18] The privately initiated suit is subject to three crippling weaknesses: (1) the plaintiff often cannot prove that one particular polluter caused his injuries, and some state courts have forbidden joinder of several polluters in the same action; (2) the equity courts do not have sufficient expertise to draw an injunction that specifically sets forth the manner in which the pollution is to be abated; and (3) the case by case method of determination inherent in the judicial process can never achieve a comprehensive program of pollution control.[19] Thus, responsibility for a pollution control program must be placed elsewhere than upon the polluters or the courts. The primary responsibility for controlling water pollution, and the concomitant power to do so, rests with the state governments and is derived from their police power.[20] By now most states

13. *Ibid.*
14. *Ibid.*
15. *Id.* at 404.
16. *The Water Pollution Control Program of the Public Health Service, supra* note 3, at 10.
17. MURPHY, WATER PURITY 136 (1961).
18. Stein, *supra* note 2, at 404.
19. MURPHY, *op. cit. supra* note 17, at 66-69.
20. Stein, *supra* note 2, at 405.

have realized that a *laissez faire* approach to water resources is inadequate and have assumed through the police power, at least in some degree, the responsibility for pollution control.[21]

Comparison of Several Existing Pollution Control Acts

In response to the need for conservation of water resources, many states have adopted some form of centralized administrative control of water pollution. An examination will now be made of the statutes establishing pollution control agencies in the states of California, Michigan, Pennsylvania, South Carolina, Texas, and Wisconsin. The purpose of this examination is to discover the strengths and weaknesses of these typical acts on various points in order to draft a model act which, hopefully, will incorporate all of their strengths and none of their weaknesses.

Since most states already have several agencies that are concerned with some aspect of the pollution problem, a state that desires to create a central administrative agency with responsibility for formulating and carrying out a comprehensive water pollution control program is faced at the outset with a choice between two different types of agencies. This choice is between creating an agency that coordinates and assumes overall direction of the pollution control activities of existing agencies and creating an agency with plenary responsibility for all pollution control activities within the state. Professor Murphy refers to the latter type of agency as a "rational" agency and says that a coordinating or "irrational" agency is much to be preferred.[22] Because water pollution problems cut across many lines of interest and require many different kinds of technical and non-technical knowledge, a "rational" agency may find its control program impossible to administer because it does not take cognizance of the expertise and interest of other agencies.[23] The acts of California, Michigan, South Carolina, Texas, and Wisconsin, although they give the central pollution control agency certain new powers and duties and make it responsible for administering a comprehensive control program, clearly intend for it to cooperate with all existing agencies which have an interest in water pollution.[24] The Pennsylvania act, on the other hand, appears to establish a "rational" agency.[25] The agency created by that act, the Sanitary Water Board,

21. *Id.* at 404.
22. MURPHY, *op. cit. supra* note 17, at 145.
23. *Ibid.*
24. CAL. WATER CODE §§ 13000-13105; MICH. STAT. ANN. §§ 3.521 to 3.533(1) (1961); S.C. CODE §§ 70-101 to 70-139 (1962); TEX. REV. CIV. STAT. art. 7621d (Supp. 1963); WIS. STAT. ANN. §§ 144.51-144.57 (1957).
25. PA. STAT. ANN. tit. 71, §§ 539-840 (1962).

must rely upon the Department of Health as its enforcement agent, but that appears to be the only agency with which it cooperates; it is expressly ordered to assume the powers formerly exercised by the Department of Health, the Department of Fisheries, and the Water Supply Commission with regard to water pollution.[26] Where a coordinating agency is created, several forces make for willing cooperation between it and the other interested agencies. One such force is necessity. The central control agency must rely upon such agencies as the health department and the conservation commission for research data and for advice on subjects peculiarly within their spheres of operation, and upon the attorney-general for legal advice and enforcement sanctions. Another factor promoting cooperation is a provision such as the one included in the California, Michigan, South Carolina, Texas, and Wisconsin acts that expressly authorizes the central control agency to seek advice and cooperation from other interested agencies.[27]

To further effect cooperation among the various interested agencies, all of the acts under consideration, with the exception of Pennsylvania's, provide that at least half the members of the central control board or committee shall be members of the state agencies most concerned with water pollution control.[28] These members can, by meeting regularly and by establishing effective communication channels, keep each other informed of the activities being conducted in their separate agencies and can inform their agencies of the work and needs of the central committee. Almost all of the Wisconsin committee members are civil engineers.[29] Their training and experience has given them a valuable stock of technical and scientific knowledge; a type of knowledge essential to an effective pollution control program. All of the states, Wisconsin excepted, which include members of interested agencies on the central committee also include representatives from the interests that are to be controlled by the committee.[30] For example, Texas specifies that one member must be from the oil and gas interests, one from agriculture, and one from manufacturing.[31] The Wisconsin practice of having all the

26. *Ibid.*

27. CAL. WATER CODE §§ 13000, 13020(g); S.C. CODE § 70-110(9) (1962); TEX. REV. CIV. STAT. art. 7621d, § 4(e)(3) (Supp. 1963); WIS. STAT. ANN. §§ 144.53(3) (1957).

28. CAL. WATER CODE § 13011; MICH. STAT. ANN. § 3.521 (1961); S.C. CODE § 70-104 (1962) TEX. REV. CIV. STAT. art. 7621d, § 3 (Supp. 1963); WIS. STAT. ANN. § 144.52(1) (1957).

29. Murphy, *op. cit. supra* note 17, at 113.

30. CAL. WATER CODE § 13011; MICH. STAT. ANN. § 3.521 (1961); S.C. CODE § 70-104 (1962); TEX. REV. CIV. STAT. art. 7621d, § 3 (Supp. 1963); WIS. STAT. ANN. § 144.52 (1957).

31. TEX. REV. CIV. STAT. art. 7621d, § 3(a) (Supp. 1963).

members come from state agencies has proved successful in that state.[32] The reasons assigned for this success are that all the committee members are civil servants and are accustomed to settling intragovernmental disputes, they are specialists in the field, and they represent state regulatory interests, not diverse business interests.[33] The interests to be regulated are not given representatives on the committee because their arguments and opinions are adequately represented in the legislature and by counsel in hearings held by the central committee. It was felt that if these interests were given representatives on the committee, the committee would be too large and its deliberative sessions would be frustrated by differences best expressed elsewhere.[34]

Each act under consideration circumscribes its scope of operation by stating what waters and what polluters may be controlled by the committee. It is in this provision that the work of political and economic pressure groups becomes apparent. If the groups and individuals affected by the act, fearing what seems to them too stringent a control program, are successful in exempting themselves from its coverage, the act will be quite restricted in its scope of operation. It is apparent, for example, that the coal-mining interests did not wish to be covered by the Pennsylvania statute.[35] Pennsylvania makes its act applicable only to sewage and exempts wastes from coal mines, tanneries, and municipal sewerage systems existing at the time the act was passed.[36] This restricts the scope of the act almost to the point of making it completely ineffectual. The California act gives the central committee authority only over pollution caused by sewage and industrial waste.[37] This disregards many other sources of pollution. The Wisconsin act covers only pollution of surface waters;[38] thereby ignoring the integral relation between the quality of ground water and the quality of surface water.[39] Michigan, South Carolina, and Texas provide for control of pollution in all ground and surface waters and grant no exemptions.[40] This is obviously the only way to achieve a comprehensive control program.

Potentially one of the most effective devices for pollution control is some form of permit system under which all present and future

32. MURPHY, *op. cit. supra* note 17, at 145.
33. *Id.* at 112.
34. *Id.* at 146.
35. PA. STAT. ANN. tit. 71, § 540(4) (1962).
36. *Ibid.*
37. CAL. WATER CODE § 13002.
38. WIS. STAT. ANN. § 144.53(1) (1957).
39. Bower, *Some Physical, Technological, and Economic Characteristics of Water and Water Resources Systems: Implications for Administration*, 3 NATURAL RES. J. 215, 219 (1963).
40. MICH. STAT. ANN. § 3.522 (1961); S.C. CODE § 70-101(2) (1962); TEX. REV.

polluters must submit reports to the committee containing a description of the wastes they intend to discharge into the state's waters and plans for the disposal methods and purification precedures they intend to use.[41] After an examination of the report and any independent investigation it deems necessary, the central committee should have the power either to prohibit the proposed discharge of wastes by refusing the permit or to condition its approval on the polluter's using prescribed treatment methods which are adequate to protect legitimate water uses.[42] The committee should also be empowered, under the permit system, to issue temporary permits to persons and industries that are economically important to the state but cannot, even by the use of the most effective treatment facilities, appreciably abate the pollution they cause. Failure to include such a provision would show a foolish naiveté towards economic realities and would render the control act unpalatable to even the most conservation-minded legislator. The control committee should of course keep pressure on this group of polluters to use the best disposal methods available and to develop new methods of waste treatment; the temporary permit coupled with periodic inspections should provide this desirable pressure. Pennsylvania, South Carolina, and Texas provide for a permit system, and Wisconsin gives the committee authority to issue special orders to individual polluters.[43] California has abandoned its permit system because it found the staff was too small to administer it properly and because the requirements for permits were impractical.[44]

A necessary adjunct to the permit system is a provision authorizing the central committee to conduct hearings when a polluter considers himself wronged by the refusal or revocation of a permit, or by any other action of the committee. California, Michigan, South Carolina, and Texas provide for such a hearing.[45] Any order made pursuant to the hearing should of course be reviewable by a court of competent jurisdiction.

CIV. STAT. art. 7621d, § 2(b) (Supp. 1963).

41. Stein, *supra* note 2, at 406.

42. *Ibid.*

43. PA. STAT. ANN. tit. 71, § 540(5) (1962); S.C. CODE § 70-110(5) (1962); TEX. REV. CIV. STAT. art. 7621d. § 4(b), (g) (Supp. 1963); WIS. STAT. ANN. § 144.53(5) (1957).

44. Note, 3 STAN. L. REV. 649, 650-51 (1951). The requirements for a permit seem to have been too strict for literal compliance, and the methods of waste treatment had to be spelled out in too burdensome detail in the permit.

Neither of these reasons justifies complete abandonment of a permit system; to effectively control pollution the permit requirements must be strict, and the control agency, to properly administer the system, must know what treatment facilities are being used.

45. CAL. WATER CODE §§ 13060-61; MICH. STAT. ANN. § 3.527 (1961); S.C. CODE §§ 70-125, to -128 (1962); TEX. REV. CIV. STAT. art. 7621d, § 4(b) (Supp. 1963).

One of the primary duties of the central committee should be the administration of both a comprehensive research program and a program for the collection of basic data. As it will be impossible for the committee to conduct all the necessary research programs itself, it should be given authority to assign projects to other state agencies and to both public and private research institutions and universities. All of the states under consideration have a provision dealing with the administration of research, but only Michigan and South Carolina appear to expressly provide for the collection of basic data.[46] Since the success of these programs is directly related to the annual appropriations given the committee by the legislature, the committee should be authorized to make requests for appropriations and for any other legislation needed to implement its pollution control program. Ouly Michigan, however, authorizes such requests for legislative action at the present time.[47]

The central committee should also serve in a consulting capacity to aid individual polluters in planning and constructing abatement facilities. This scientific and engineering advice is especially needed by small businesses and municipal corporations, which are egregious polluters but lack the capital and technical knowledge necessary to abate the pollution caused by their activities.[48] Only the Texas act expressly covers this point.[49]

Finally, an act should provide for cooperation of the state central committee with the federal government and with pollution control agencies of other states. The federal government has enacted extensive legislation in this area providing for state-federal cooperation and federal grants of funds to state agencies to secure abatement of water pollution.[50] To avail itself of the benefits of the program established by the Federal Water Pollution Control Act, a state must have an agency qualified to receive and disburse federal funds and to cooperate with the Public Health Service on joint endeavors.[51] Since interstate compacts have proved to be a highly effective method of abating pollution in interstate rivers, the act should certainly authorize the committee to negotiate with other states for the formation of such compacts.[52] Only Michigan, South Carolina, and

46. MICH. STAT. ANN. § 3.522 (1961); S.C. CODE §§ 70-110(10), (11) (1962).

47. MICH. STAT. ANN. § 3.522(1) (1961).

48. See MURPHY, *op. cit. supra* note 17, at 97-98.

49. TEX. REV. CIV. STAT. art. 7621d. §§ 4(e)(1), (2) (Supp. 1963).

50. Federal Water Pollution Control Act, 70 Stat. 498 (1956), 33 U.S.C. § 466 (1958).

51. Federal Water Pollution Control Act, 70 Stat. 498 (1956), 33 U.S.C. § 466c (1958).

52. Stein, *supra* note 2, at 410.

Texas adequately provide for federal and interstate cooperation.[53] The California act provides for cooperation only with respect to research projects. The Wisconsin act is unclear as to interstate cooperation and is silent on the point of federal cooperation.[54]

Proposed Model Act

Purpose

Section 1. In furtherance of the declared policies of this state of protecting the health of its citizens and maintaining the purity of its water, this Act is promulgated to establish a Water Pollution Control Committee, which shall have authority to formulate and carry out a comprehensive program for the control of water pollution in this State.

Definitions

Section 2. When used in this Act the following words and phrases shall have the meanings assigned to them in this section:

(a) "Basic data" means information about the sources, kinds and amounts of pollution; the causes and effects of pollution; the kinds, costs, and effectiveness of treatment facilities; the costs and benefits associated with pollution control; and other similar engineering, scientific, and economic information.

(b) "Committee" means the Water Pollution Control Committee.

(c) "Industrial waste" means any liquid, solid, or gaseous waste resulting from any process of industry, mining, manufacturing, trade, or business.

(d) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with such ground and water infiltration and surface waters with which it may be commingled.

(e) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, clay, lime, cinders, ashes, offal, oil, tar, dye stuffs, acids, chemicals, dead animals, and all other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of this state.

(f) "Person" means any individual, public or private corporation, political subdivision, government ageney, municipality, copartnership, association, firm, trust, estate, or any other legal entity.

(g) "Pollution" means the discharge of any substance into the waters of this state that renders those waters injurious to public health, unfit for commercial or recreational use, or deleterious to fish, birds, animals, or plant life.

(h) "Waters" means all the waters of this State, both surface and underground.

(i) "Treatment facilities" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste or other wastes.

53. MICH. STAT. ANN. § 3.522(1) (1961); S.C. CODE §§ 70-110(a)(13) through (16), 70-111 (1962); TEX. CIV. STAT. art. 7621d, §§ 3(i), 4(e)(4) (Supp. 1963).
54. CAL. WATER CODE § 13024; WIS. STAT. ANN. § 144.53(7) (1957).

Creation and Organization of Committee

Section 3. There is hereby created a Water Pollution Control Committee. The Committee shall consist of one representative from each state agency that has any authority over or direct concern in water pollution control, the State Sanitation Engineer, and the Director of the State Board of Health. The State Board of Health shall appoint as chairman of the Committee a person who is a competent administrator and an experienced sanitation engineer. The chairman may appoint such permanent staff members as he deems necessary, subject to approval by the full Committee.

Duties of the Committee

Section 4. The Committee shall have the duty, power, jurisdiction, and authority:

(a) To establish its own place and time of meeting;

(b) To formulate a long-range, comprehensive plan for the control of water pollution in this State;

(c) To promulgate any rules and regulations and to issue any orders necessary to carry out the purpose of abating pollution of the waters of this State, as set forth in this Act;

(d) To collect basic data, conduct scientific experiments, investigations, and research to discover economical and practicable methods for the elimination, disposal, or treatment of sewage, industrial or other wastes. To this end the Committee may request research assistance and advice from other state agencies, and it may assign special research projects to private research institutions and to both public and private universities;

(e) To make requests to the State Legislature for appropriations and for additional legislation to implement its control program;

(f) To cooperate with the United States government and the governments of other states and any other agencies or groups of agencies or organizations, official or unofficial, with respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements;

(g) To approve projects for which applications for grants under the Federal Water Pollution Control Act are made by municipalities;

(h) To cooperate fully with the Public Health Service in any cooperative research endeavors or enforcement measures initiated under the Federal Water Pollution Control Act;

(i) To consult with individual polluters and give them engineering and scientific advice to enable them to construct or improve waste and sewage treatment facilities.

Permit System

Section 5. (a) The Committee shall require written reports and applications for permits to discharge wastes from all persons who are discharging or who plan to discharge sewage, industrial wastes, or other wastes into the waters of this state. The report shall contain a complete and accurate description of the kinds of wastes, the amounts thereof, and the existing treatment facilities, or any plans for construction of treatment facilities. After examining the report and conducting any independent investigation it deems necessary, the Committee shall:

(1) issue the applicant a permit to discharge wastes or sewage into the state's waters, or

(2) refuse to issue such a permit and order the applicant not to proceed with the proposed or present discharge of wastes or sewage, or

(3) issue a permit on condition that the applicant construct prescribed or recommended treatment facilities or undertake any other reasonable measures to protect the pure quality of the state's waters, or

(4) issue a temporary permit as described in sub-part (d) of this section.

(b) No permit shall be considered irrevocable and may be revoked, subject to a proper hearing for the permittee, any time the Committee deems such revocation necessary to ensure the pure quality of this State's waters.

(c) If any person, having been granted a permit, plans to make any substantial change in either the quality or quantity of the wastes discharged by him, he shall submit a new report to the Committee and request a revised permit.

(d) If any applicant demonstrates to the Committee that he cannot, even by using the most effective treatment facilities available, appreciably diminish the harmful effects upon the state's waters of the wastes discharged by him, or that the use of effective treatment facilities would cause him to cease operations altogether, the Committee may issue to the applicant a temporary permit, which must be renewed annually by the submission of a new report (described in Section 5 (a)) and application. The Committee shall renew the temporary permit only if it is satisfied that the permittee is still unable to abate the pollution caused by him.

Hearings

Section 6. (a) Any person affected by the Committee's action in refusing, revoking, amending, or conditioning a permit, or by any other rule, regulation, or order of the Committee may obtain a hearing before the Committee by filing a petition for such hearing with the Committee within 60 days after the permit, rule, regulation or order complained of was acted upon or promulgated.

(b) At a hearing, the Committee is authorized to receive pertinent and relevant information from any party in interest who appears before it, to compel the attendance of witnesses, and to make findings of fact and determinations, all with respect to the complaint before it.

(c) Any final order of the Committee issued pursuant to findings made at a hearing shall be reviewable de novo by the court for the county in which the appealing party resides.[55] To secure such a review de novo, the appealing party must petition the above designated court within 60 days after the Committee has issued its final order.

Enforcement by Attorney-General

Section 7. Upon request by the Committee, the Attorney-General shall bring suit to enjoin any violations of the Committee's rules or orders.

55. Because of the economic factors and the often intense community and statewide concern involved in pollution control, it is felt that a review de novo has much to recommend it. The scope of review will, however, in many cases be dictated by state administrative procedure acts or even constitutional provisions. See, for example, Board of Educ. v. Chattin, 376 S.W.2d 693 (Ky. 1964), where the Kentucky court held that a court could not review de novo an administrative decision because the matter did not arise as a judicial question—that is, did not originate within the courts.