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STATE OF CALIFORNIA

California Law Revision Commission

MINUTES OF MEETING

OF

AUGUST 28, 1954

Pursuant to the call of the Chairman, the California Law Revision Commission met at 10 A.M., August 28, 1954 at Stanford Law School.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman

Honorable Jess R. Dorsey, Senate

Honorable Stanford C. Shaw, Assembly

Mr. John D. Babbage

Mr. Richard C. Fildew

Mr. Bert W. Levit

Mr. John Harold Swan

Mr. Samuel D. Thurman

Mr. Ralph N. Kleps, Legislative Counsel and ex officio member of the Commission, was not present but was represented by Mr. Charles W. Johnson, Chief Deputy Legislative Counsel. Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was present. During a part of the meeting, Mrs. Virginia Nordby, Mr. Willis Hannawalt, Mr. Byron Crippin and Mr. Arnold Gold, Research Assistants employed by Stanford University under its contract with the Commission, were present.

BUDGET

The Commission first discussed the budget which it will recommend for fiscal year 1955-56. It was tentatively decided that the following recommendations will be made:

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| 1. Commissioners' per diem compensation (24 meeting days per year for each Commissioner appointed by the Governor). | | \$ 3,360.00 |
| 2. Salary of Executive Secretary | | \$ 8,000.00 |
| 3. Salary of Assistant to Executive Secretary (Added Staff position) | | \$ 5,000.00 |
| 4. Salary of Senior Stenographer-Clerk | | \$ 3,645.00 |
| 5. Salary of Intermediate Stenographer-Clerk (Added staff position) | | ^{2916.00} \$ 2,916.00 |
| 6. Office expense | | \$ 500.00 |
| 7. Printing | | \$ 1,000.00 |
| 8. Travelling in State * | | ^{10,166.00} \$ 10,000.00 |
| 9. Telephone and Telegraph | | \$ 300.00 |
| 10. Postage | | \$ 500.00 |
| 11. Research Services | | \$20,000.00 |
| 12. Office equipment | | |
| Stenographer's desk | \$126.00 | |
| Stenographer's chair | 40.00 | |
| Typewriter | 443.00 | |
| Mimeograph Machine | <u>613.00</u> | \$ 1,222.00 |
| | | 57,000.00 |
| | | \$57,000.00 |
| | | \$ 56,603.00 |
| | Total Support | |

*This item is calculated on the basis of twelve two-day meetings of the Commission and eight two-day meetings of Committees for each of the seven Commissioners appointed by the Governor plus travel for the Executive Secretary and his Assistant and the Research Consultants.

The Commission decided to request two additional staff positions, Assistant to the Executive Secretary and Intermediate Stenographer-Clerk, and the necessary office equipment for the additional stenographer.

The Commission also decided that the volume of its mimeographing work, as already demonstrated, makes a mimeograph machine essential to its operation.

It was agreed that the figure of \$20,000 for research services would be presented as an estimate, supported by a tentative Calendar of topics selected for study, and subject to revision in light of such action as may be taken by the Legislature, not only with respect to the Calendar, but also in giving the Commission additional assignments. In view of the fact that the Commission does not yet have a tentative Calendar of topics selected for study, Mr. Johnson was asked to secure an extension from the Department of Finance of the date for the presentation of the Commission's proposed budget.

The Executive Secretary was directed, in preparing the budget figures to be presented to the Department of Finance, to include in the figure for Research Services for the current year the \$12,000 appropriation for the Education Code revision and the \$2,000 for the Agenda project carried over from the last fiscal year, in order to give a more accurate picture of the total cost of the Commission's operations for the current fiscal year.

Discussion of Role of Commission

The Commission next considered the Executive Secretary's memorandum relative to the nature and scope of the Commission's activity. In his memorandum the Executive Secretary recommended that the Commission prepare a considered statement of its view of the role of a Law Revision Commission, to be communicated to the Legislature in the Commission's first report and to other interested people and

organizations in the State. There was considerable discussion of this proposal in the course of which several Commissioners expressed doubt that such a statement could or should be formulated now. Some members expressed the view that the Commission necessarily must take whatever assignments the Legislature gives it. The Commission decided not to attempt to formulate the statement proposed by the Executive Secretary at this time.

Discussion of Remarks to be Made at Coronado

The Commission next considered a draft of the Executive Secretary's proposed remarks to be made when the members of the Commission and the Executive Secretary are introduced to the Conference of State Bar Delegates at Coronado. A number of suggestions were made, principally to the effect that the statement should be more affirmative in character and that the statute creating the Commission be more extensively quoted.

Education Code Project

The Commission next took up the Education Code project. Mrs. Nordby and Messrs. Hannawalt, Crippin and Gold were introduced to the Commission and were present during the discussion. Certain proposed revisions of the Education Code and several general questions relating to the way in which the work of revising the Code should proceed were discussed. The following matters were decided:

1. The Commission will not propose revisions, the sole function of which is to make more readily readable sections of the

Education Code which are not ambiguous as they are now written unless such revision is recommended by one of the educators asked to make suggestions for revision of the Code. Moreover, the Commission will not propose revisions to change the term "Board of Trustees" to "Governing Board" unless this is necessary to clarify an existing ambiguity. When a Code section must be revised, however, to accomplish a change within the scope of the Commission's work on the Code -- e.g. to clarify an ambiguity -- the Commission will also propose revisions to improve its readability and to change "Board of Trustees" or some equivalent term to "Governing Board".

2. The Commission will not recommend taking existing provisions out of the Code and continuing them as "live law" at some other place. If it is clear that a Code section is obsolete and cannot have prospective operation, the Commission will recommend its repeal; if not, the section shall remain in the Code insofar as the Commission is concerned. (In connection with the discussion on this point, it was suggested that the Stanford staff write to the Department of Education to determine whether any school district created under Section 8711 et seq. of the Code is still in existence. If not, the Commission will recommend the repeal of these sections.)

3. There was considerable discussion of the matter of cross-references in the Code. The Commission decided (1) that when it can be certain that all possible exceptions can be specifically designated it will recommend that specific cross references be substituted for "except as otherwise authorized by law" and equivalent phrases and (2) that, whenever possible, cross references recommended by the Commission will be in terms of the subject matter of the sections to which reference is made rather than of section numbers because of the

danger that references of the latter type may become obsolete through later changes in section numbers.

The Commission then considered whether committees of the Commission should be appointed to work on the Education Code. The Secretary suggested that the best method would be to appoint committees without assigning any definite subject matter to them so that as proposed revisions relating to any part of the Code are prepared in sufficient volume they can be assigned to a committee for study. After discussion, a motion was made by Mr. Swan, seconded by Mr. Shaw, and unanimously passed that the Chairman be empowered to appoint committees to work on proposed revisions of the Education Code and that the Chairman or Executive Secretary be directed to devise methods of making committee assignments which will result in an equitable division of the work.

The Secretary called the attention of the Commission to the problem raised in his Progress Report on the Education Code relating to the prospective hiatus in the Education Code project as of January 1. The Commission discussed whether any of the \$12,000 appropriation for the Education Code revision would be available for expenditure after January 1 if the report of the Commission is made on that date and whether, if it is not, the Commission's general research funds should be used to keep the Stanford staff intact until additional funds are appropriated. Mr. Johnson agreed to obtain the view of the Department of Finance as to the availability of the Education Code funds after January 1 and the Commission postponed action on this matter until that information is obtained.

The Commission decided that it would not pay Mr. Alton Scott for any information which he may have relevant to obsolescence in the

Education Code.

At the conclusion of the Commission's discussion of the Education Code project, Mrs. Nordby and Messrs. Hannawalt, Crippin and Gold were excused.

Agenda Project

The Commission next took up the Agenda project. The Commission first discussed the procedure for handling suggestions received from outside sources. It was agreed that the Executive Secretary shall make a preliminary analysis of such suggestions and that he shall have the staff at Stanford prepare reports on those suggestions which he decides will probably be of interest to the Commission. These reports will be similar to the reports prepared by the staff of the New York Law Revision Commission with respect to suggestions for study received from outside sources. The suggestions which the Executive Secretary deems unlikely to be of interest to the Commission shall be transmitted to the Commission as they are received without a staff report. No staff report will be made on the latter suggestions unless specifically requested by the Commission.

It was also decided that whenever a suggestion for study is received relating to a field of activity within the purview of another government agency, the Secretary shall contact the other agency to find out whether it is doing, or proposes to do, anything about the matter which the suggestion concerns. In this way the Commission will be informed about the plans of other government agencies and can take them into account in deciding whether or not to place particular matters on its Calendar. A specific application

of this procedure was ordered with respect to the several suggestions which the Commission has received to date relating to the need for re-examination of commitment procedures with respect to sexual psychopaths. The Commission directed the Executive Secretary to make an inquiry of the Department of Mental Hygiene to find out whether the Department intends to make any proposals for change in commitment procedures at the next session of the Legislature and, if so, what the nature of its proposals will be. After the Executive Secretary reports the information obtained from the Department the Commission will decide whether to put this matter on its Calendar.

The following action was taken on suggestions received:

1. The Commission considered Assemblyman Conrad's inquiry whether the Commission would be interested in undertaking to standardize the various election laws in California. After discussion, the Commission directed the Executive Secretary to write Assemblyman Conrad, telling him (1) that the Commission is informed that the Legislative Counsel's office has done considerable work in this area and believes that the work of standardization should, therefore, be done by that office rather than by the Commission and (2) that the Commission does not have the staff and facilities at the present time to undertake a project of such proportions, particularly in light of its assignment to revise the Education Code which might be continued beyond January 1.

2. The Commission considered the suggestion made by Judge Peters that the Commission undertake to draft and propose enactment of statutory jury instructions in personal injury cases. The Executive Secretary was directed to write Judge Peters telling him

that the Commission had considered his proposal, is much interested in it and has tentatively decided to put it on the Commission's Calendar. The Secretary was also directed to advise Judge Peters that the Commission's Calendar is, of course, subject to approval by the Legislature under §10335 of the Government Code.

3. The Commission considered the suggestion of Judge Bishop of the Superior Court of Los Angeles County that the law be clarified as to the effective date of a judicial order. The question was raised whether this is a matter which ought to be taken up by the State Bar rather than by the Commission. The Executive Secretary was directed to write a letter to the Secretary of The State Bar inquiring whether The State Bar will sponsor a bill on this subject at the next session of the Legislature and to report back to the Commission the answer which he receives to this inquiry. The Commission will then act upon Judge Bishop's suggestion.

Probate Code Project

The Commission then considered the Probate Code study which has been assigned to it by Assembly Concurrent Resolution No. 8. After discussion of the report of the Executive Secretary on this matter, a motion was made by Senator Swan, seconded by Mr. Fildew and unanimously passed that the Chairman be authorized to enter into a contract with a suitable person to serve as Research Consultant on this project for an honorarium not to exceed \$1,000.

Miscellaneous

The Commission considered the letter received by Chairman Stanton from Mr. L. E. Hollowell, President of the County Clerks' Association of California, inquiring whether one of the members of that Association might attend each of the Commission's meetings. It was decided that a letter should be written to Mr. Hollowell pointing out to him that the Commission devotes so much of its time to matters which would not be of interest to his Association - e.g., to the Education Code - that attendance by a member would not be worthwhile to the Association.

Several members of the Commission reported that they are having difficulty in segregating and organizing materials received from the Executive Secretary relating to various parts of the Commission's program. The following suggestions were made: (1) that different colored paper be used for different projects; (2) that all communications be dated; (3) that the Secretary send out at one time only material relating to one project; (4) that the pages of all material relating to a single project be numbered consecutively; (5) that all "Suggested Topics for Study" prepared by the Stanford staff be consecutively numbered; (6) that all suggestions received from outside sources be consecutively numbered; (7) that each proposed revision of the Education Code be labelled to show the defect in the present section (ambiguous, conflicting, etc.); and (8) that proposed revisions of titles in the Education Code be marked to show at what point in the Code they appear.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary