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A G E N D A

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Palm Springs

December 18-19, 1959

Friday, December 18

1. Minutes of November 1959 Meeting (enclosed).
2. Approval of payment of consultant for Study No. 29 and Study No. 43 (studies sent 12/1/59).
3. Annual Report. See Memorandum No. 5 (to be sent).
4. Study No. 34 - Uniform Rules of Evidence.
  - (1) Hearsay Evidence:
    - (a) Memorandum No. 11 (includes Chadbourn's memo on Rule 17) (sent 12/8/59)
    - (b) Memorandum No. 3 (enclosed) and Memorandum No. 4 (enclosed)
  - (2) Privileges.

See Memorandum No. 1 (enclosed) and Memorandum No. 2 (enclosed).
5. Study No. 32 - Arbitration.

See Memorandum No. 9 (sent 12/8/59).

Saturday, December 19

6. Study No. 36 - Condemnation:
  - (1) Proposed Mailing List. See Memorandum No. 10 (to be sent).
  - (2) Evidentiary Problems in Eminent Domain Cases.

See Study (sent 10/28/59) and Memorandum No. 7 (sent 12/8/59)
  - (3) Moving Expenses.

See Study on Moving Expenses (you have this study) and Memorandum No. 6 (sent 12/8/59).

Saturday, December 19 - continued

7. Study No. 51 - Right of Wife to Support After Ex Parte Divorce.

See Memorandum No. 8 (to be sent).

8. Study No. 23 - Rescission of Contracts.

See Memorandum No. 12 (to be sent).

Minutes of Meeting  
of  
December 18 and 19, 1959  
Palm Springs

A regular meeting of the Law Revision Commission was held in Palm Springs on December 18 and 19, 1959.

Present: Thomas E. Stanton, Jr., Chairman  
Honorable Clark L. Bradley  
Honorable James A. Cobey  
Leonard J. Dieden  
George G. Grover  
Roy A. Gustafson  
Charles H. Matthews  
John R. McDonough, Jr.  
Herman F. Selvin

Absent: Ralph N. Kleps

Messrs. John H. DeMouilly and Joseph B. Harvey and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Professor James H. Chadbourn of the School of Law, University of California at Los Angeles, the research consultant for Study No. 34(L) - Uniform Rules of Evidence, was present during a part of the meeting on December 18.

Mr. Robert Nibley, of the law firm of Hill, Farrer & Burrill of Los Angeles, research consultant for Study No. 36(L) - Condemnation, and his associates, Messrs. John McLaurin, Albert Day and Stanley Tobin, were present during a part of the meeting on December 19.

After the following corrections were made, the minutes of the meeting held on November 27 and 28, 1959, were approved:

(1) Page 5. The words "of appreciation" should be deleted throughout the paragraph on page 5.

(2) Page 16. The word "not" should be added after the word "privilege" on the last line of page 16.

(3) Page 19. Delete "Rule 7" in the second line and insert "Rule 25(7)."

(4) Page 22. During the discussion relating to the Commission action taken on the subject of condemnation at the November 27 and 28 meeting, a motion was made by Mr. Gustafson, seconded by Mr. McDonough, and approved to correct the first paragraph on page 22 to read as follows:

3. A motion was made by Mr. McDonough and seconded by Mr. Selvin to approve the principle that admissible evidence of market data should be admitted as independent evidence of the value of the subject property and not merely as in support of an expert's opinion. The motion carried: . . .

I. ADMINISTRATIVE MATTERS

A. 1960 Annual Report: The Commission considered Memorandum No. 5 (12/10/59); a letter from Mr. Kleps to Mr. Stanton (dated 12/1/59) relating to action taken at the October meeting with respect to the constitutionality of Section 1060(g) of the Government Code; and a copy of the proposed 1960 Annual Report of the Commission. (A copy of each of these items is attached hereto.) After the matter was discussed the following changes were agreed upon:

1. Page 3. The commas after the word "recommendation" in the seventh line and after the word "departments" in the ninth line of the second paragraph should be deleted.

2. Page 5. A statement regarding the appointment of The Honorable Frank S. Balthis as judge of the Superior Court should be included.

3. Page 8. A motion was made by Mr. McDonough, seconded by Mr. Gustafson, and unanimously adopted to delete from the last paragraph the reference to the places and dates of the Commission meetings.

4. Page 9. The word "expand" should be substituted for the word "extend" in the 6th line of the first paragraph.

5. Page 10. A motion was made by Mr. McDonough, seconded by Mr. Bradley, and unanimously approved to revise the fourth sentence of the second paragraph to read substantially as follows: "After the Commission carefully considered a number of questions raised relating to various provisions and the claims procedure in Assembly Bill No. 405, it made extensive amendments to Assembly Bill No. 405 and technical amendments to Assembly Bills Nos. 406, . . ."

6. Page 11. The question was raised as to whether the use of the word "died" in the fourth line of the second complete paragraph is technically correct. After the matter was discussed, a motion was made by Mr. Stanton, seconded by Mr. Bradley, but did not carry to give the Executive Secretary discretion to use the appropriate language after discussing it with the Legislative Counsel. Messrs. Dieden, Grover, Gustafson and McDonough voted in opposition to the motion. A motion was then made by Mr. McDonough, seconded, and unanimously adopted to retain the word "died."

7. Page 18. Report on Statutes . . . Held Unconstitutional:

The Commission considered the comments made by Mr. Kleps in his letter to the Chairman and reconsidered its former action taken at the November 27-28 meeting relating to People v. Chessman. During the discussion some members expressed the opinion that the decision of the Supreme Court in People v. Chessman is not clear as to whether it held Government Code 1060(g) unconstitutional. After the matter was discussed, a motion was made by Senator Cobey and seconded by Mr. Grover to revise subparagraph (3) as follows:

(a) To state with no further comment that, with reference to decisions of the Supreme Court holding a statute unconstitutional, the Commission noted People v. Chessman; and

(b) To quote from the case how the issue arose and the holding of the Supreme Court with regard to Government Code Section 1060(g).

The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews,  
McDonough, Stanton.

No: Selvin.

It was agreed that the revision relating to this matter should be submitted at the January meeting.

8. Page 19. It was agreed that the second paragraph on page 19 should be deleted.

A motion was then made by Mr. Bradley and seconded by Senator Cobey to approve the 1960 Annual Report as corrected subject to the designation in the appropriate places of the Chairman and Vice-Chairman and subject to the review at the January meeting of the portion of the report concerning the Chessman decision.

The motion carried:

Aye: Bradley, Cobey, Dleden, Grover, Gustafson, Matthews,  
McDonough, Stanton.

No: None.

Pass: Selvin.

II. CURRENT STUDIES

A. Study No. 23 - Rescission of Contracts: The Commission considered Memorandum No. 12 (12/11/59) relating to how the Commission should proceed on this study. (A copy of which is attached hereto.) After the matter was discussed a motion was made, seconded, and unanimously adopted to direct the staff to review the study and previous memorandums on this topic and to submit a memorandum presenting the entire matter de novo.

Minutes - Regular Meeting  
December 18 and 19, 1959

B. Studies 29 and 43 - Post-Conviction Sanity Hearings - Separate

Trial Issue Insanity: The Commission considered copies of the studies relating to post-conviction sanity hearings and whether the separate trial on the issue of insanity in criminal cases should be abolished, prepared by Professor David W. Louisell, for the purpose of approving payment to him. After the matter was discussed it was agreed to defer further consideration of this matter until Professor Louisell submits a proposed draft statute to accompany each of his studies.

C. Study No. 34(L) - Uniform Rules of Evidence: The Commission had before it Memorandum No. 1 (12/10/59) and attached material; Memorandum No. 2 (12/10/59) and attached material; Memorandum No. 3 (12/10/59) and attached material; Memorandum No. 4 (12/10/59) and attached material; Memorandum No. 11 (12/10/59); and Professor Chadbourn's memorandums relating to Uniform Rules 17, 18 and 19 and Rule 62. (A copy of each of these items is attached hereto.)

I. The Commission first considered Professor Chadbourn's memorandum relating to Uniform Rules 17, 18 and 19. After the matter was discussed the following action was taken:

Rule 17. A motion was made by Seantor Cobey and seconded by Mr. McDonough to approve the adoption of Rule 17 as drafted. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough,  
Stanton.

No: Dieden, Selvin.

Rule 19. A motion was made by Mr. Grover and seconded by Mr. Gustafson to delete the third sentence from Rule 19 which reads:

The judge may reject the testimony of a witness that he perceived a matter if he finds that no trier of fact could reasonably believe that the witness did perceive the matter.

The motion did not carry:

Aye: Dieden, Grover, Gustafson, McDonough.

No: Bradley, Selvin, Stanton.

Pass: Cobey, Matthews.

A motion was then made by Mr. Grover and seconded by Mr. Dieden to approve the adoption of Rule 19, excepting the third sentence for further consideration. The motion did not carry:

Aye: Cobey, Dieden, Grover, Gustafson.

No: Bradley, Matthews, McDonough, Selvin, Stanton.

A motion was then made by Mr. Bradley and seconded by Mr. Stanton to approve the adoption of Rule 19 making, however, the third sentence the last sentence and substituting the word "exclude" for the word "reject."

The motion did not carry:

Aye: Bradley, Matthews, Selvin, Stanton.

No: Cobey, Dieden, Grover, Gustafson, McDonough.

A motion was then made by Mr. McDonough and seconded by Mr. Dieden to approve the adoption of Rule 19 as revised by deleting the third sentence.

The motion carried:

Aye: Dieden, Grover, Gustafson, Matthews, McDonough.

No: Bradley, Selvin, Stanton.

Pass: Cobey.

[Comment: It was agreed that if the third sentence were to be retained in Rule 19 it would give the judge a right to pass on the credibility of the testimony that goes beyond merely passing on the capacity of the witness to perceive.]

Rule 18. A motion was made by Mr. McDonough and seconded by Mr. Grover to approve the adoption of Rule 18 as drafted. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

II. The Commission then considered Memorandums Nos. 3 and 4 relating to the various exceptions to the Hearsay Rule that had not been finally acted upon by the Commission. After the matter was discussed the following action was taken:

Rule 65A. A motion was made by Mr. Selvin, seconded by Mr. McDonough, and unanimously adopted to consider Rule 65A in the special context of each of the exceptions to the hearsay rule.

Rule 63(4). A motion was made by Senator Cobey and seconded by Mr. McDonough not to make Rule 63(4) subject to Rule 65A. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough.

No: Dieden, Selvin, Stanton.

Rule 63(5). A motion was made by Senator Cobey and seconded by Mr. McDonough not to make Rule 63(5) subject to Rule 65A. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin.

No: Stanton.

Rule 63(6). A motion was made by Senator Cobey and seconded by Mr. McDonough not to make Rule 63(6) subject to Rule 65A. The motion carried:  
Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough, Stanton.  
No: Selvin.  
Pass: Dieden.

Rule 63(7). A motion was made by Senator Cobey and seconded by Mr. Grover not to make Rule 63(7) subject to Rule 65A. The motion carried:  
Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough, Selvin.  
No: Stanton.

Rule 63(8). A motion was made by Mr. Dieden and seconded by Mr. McDonough not to make Rule 63(8) subject to Rule 65A. The motion carried:  
Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough, Selvin.  
No: Stanton.

Rule 63(10). A motion was made by Senator Cobey and seconded by Mr. McDonough not to make Rule 63(10) subject to Rule 65A. The motion carried:  
Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough.  
No: Dieden, Selvin, Stanton.

Rule 63(12). A motion was made by Mr. Grover and seconded by Mr. McDonough not to make Rule 63(12) subject to Rule 65A. The motion carried:  
Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough, Stanton.  
No: Dieden, Selvin.

Rule 63(23) and (24). A motion was made by Senator Cobey and seconded by Mr. McDonough not to make Rule 63(23) and (24) subject to Rule 65A. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, McDonough.

No: Dieden, Matthews, Selvin, Stanton.

A motion was then made by Mr. Selvin and seconded by Mr. Dieden to direct the staff to redraft Rule 65A to provide in substance the principle that a declaration is inadmissible if the judge finds that at the time of the event or fact declared when the declarant made the declaration, the declarant did not have the capacity to perceive the event; or at the time of the event or fact declared the declarant did not have the capacity to communicate the event or fact or the capacity to understand the duty of a witness to tell the truth. And make all the exceptions to the hearsay rule that were subject to Rule 65A as originally proposed subject to Rule 65A as redrafted with the exception of Rule 63(7) and (8). The motion did not carry:

Aye: Dieden, Selvin, Stanton.

No: Bradley, Cobey, Grover, Gustafson, McDonough.

Pass: Matthews.

A motion was then made by Senator Cobey and seconded by Mr. Bradley to delete Rule 65A from the Uniform Rules of Evidence. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough, Stanton.

No: Dieden, Selvin.

A motion was then made by Mr. Matthews and seconded by Senator Cobey to direct the staff to revise Rule 63(23) and (24) to provide in substance the principle that a statement is admissible if the judge finds that at the time that the statement was made the declarant had the mental capacity to make a meaningful statement. The motion carried:

Aye: Cobey, Dieden, Grover, Matthews, Selvin.

No: Bradley, Gustafson, McDonough, Stanton.

Rule 62. A motion was made by Mr. McDonough and seconded by Mr. Stanton to approve the adoption of subsections (6) and (7) of Rule 62 as re-drafted in Memorandum No. 3. The motion carried:

Aye: Bradley, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

Pass: Cobey.

Rule 63(14). A motion was made by Mr. Selvin and seconded by Mr. McDonough to approve Rule 63(14) as revised. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

III. The Commission then considered Memorandums Nos. 1 and 2 relating to Privilege Evidence. After the matter was discussed the following action was taken:

Rule 23. A motion was made by Mr. McDonough and seconded by Mr. Grover to approve Rule 23 as revised in Memorandum No. 1. The motion carried:

Aye: Cobey, Dieden, Grover, Matthews, McDonough, Selvin, Stanton.

No: None.

Not Present: Bradley, Gustafson.

Rule 25. A motion was made by Mr. McDonough and seconded by Mr. Dieden to approve the adoption of Rule 25(3) as revised. The motion carried:

Aye: Cobey, Dieden, Grover, Matthews, McDonough, Stanton.

No: Selvin.

Not Present: Bradley, Gustafson.

A motion was made by Mr. McDonough and seconded by Mr. Dieden to approve the adoption of Rule 25(7) as revised. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough, Stanton.

No: Selvin.

A motion was made by Mr. McDonough and seconded by Mr. Gustafson to approve the adoption of Rule 25(9) as drafted and revised as follows: The phrase "before the trier of fact" should be deleted and the phrase "or any other action or proceeding" should be inserted after the word "proceeding." The motion did not carry:

Aye: Grover, Gustafson, McDonough.

No: Bradley, Cobey, Dieden, Matthews, Selvin.

Not Present: Stanton.

Minutes - Regular Meeting  
December 18 and 19, 1959

A motion was then made by Senator Cobey and seconded by Mr. Bradley to approve the adoption of Rule 25(9) as drafted. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Matthews, Selvin, Stanton.

No: Gustafson, McDonough.

The Commission directed the staff to revise Rule 25(10) to state the existing law.

Rule 34. A motion was made by Mr. McDonough and seconded by Mr. Selvin to approve the adoption of Rule 34 as revised. The motion carried:

Aye: Bradley, Cobey, Dieden, Gustafson, Matthews, McDonough, Selvin,  
Stanton.

No: Grover.

Rule 36. A motion was made by Senator Cobey and seconded by Mr. McDonough to approve the adoption of Rule 36(2) as revised to read:

(2) This rule applies only if the information is furnished directly to a law enforcement officer or to a representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated or is furnished to another for the purpose of transmittal to such officer or representative.

The motion carried:

Aye: Bradley, Cobey, Dieden, Gustafson, Matthews, McDonough, Selvin,  
Stanton.

No: None,

Pass: Grover.

Minutes - Regular Meeting  
December 18 and 19, 1959

IV. The Executive Secretary raised the question as to whether Professor Chadbourn should be paid the major portion of the remaining amount due him under his contract inasmuch as he has substantially completed the Study of the Uniform Rules of Evidence. The unpaid balance under the contract is \$2,500. After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Dieden, and unanimously approved to pay Professor Chadbourn \$2,000 of the unpaid balance under contract No. 20 (1958).

D. Study 36(L) - Condemnation Study: The Commission had before it Memorandum No. 10 (12/10/59); Memorandum No. 7 (12/8/59) and the portion of the study relating to evidentiary problems in eminent domain cases prepared by the research consultant of the law firm of Hill, Farrer and Burrill. (A copy of each of these items is attached hereto.)

I. The Commission first considered Memorandum No. 10 -- a suggested mailing list for distribution of materials on the Condemnation Study. After the matter was discussed and several additional names added to the list, it was agreed that the Executive Secretary should write to each person listed stating what is involved and asking him if he is interested in receiving materials on the Condemnation Study and indicating that the Commission is interested in any comments he may have concerning the materials.

II. The Commission then considered Memorandum No. 7 relating to evidentiary questions presented by the Study of Evidentiary Problems which were not yet decided. After the matter was discussed the following actions were taken:

A. Acquisition of Property

It was agreed that the phrase "agency with the power of condemnation" is ambiguous and that the draft statute should be more specific.

(1) A motion was then made by Mr. Dieden and seconded by Mr. McDonough to approve the principle of that portion of the decision of the Faus case holding that evidence of a sale to a condemnor is admissible upon a showing that the sale of the property was voluntarily made without the

threat of condemnation. The motion did not carry:

Aye: Dieden, McDonough.

No: Bradley, Cobey, Grover, Gustafson, Matthews, Selvin, Stanton.

(2) A motion was then made by Mr. McDonough and seconded by Mr. Dieden to approve the principle that no evidence should be admitted concerning the price and terms of any acquisition of property if such acquisition was made by any person or agency that had the power to acquire such property by the power of eminent domain for the purpose for which it was in fact acquired. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

B. Offers as Admissions

(1) A motion was made by Mr. Gustafson and seconded by Mr. Selvin to approve the principle that an offer made by the condemnee to sell to third parties should be admitted as an admission. The motion carried:

Aye: Cobey, Grover, Gustafson, Matthews, McDonough, Selvin, Stanton.

No: Bradley, Dieden.

(2) A motion was made by Senator Cobey and seconded by Mr. Dieden to approve the principle that offers by the condemnee to sell to the condemnor should not be admitted as admissions. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Matthews, McDonough, Selvin,  
Stanton.

No: None.

Pass: Gustafson.

Minutes - Regular Meeting  
December 18 and 19, 1959

(3) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that offers by the condemnor to the condemnee should not be admitted as admissions. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, McDonough, Stanton.

No: Dieden, Grover.

Pass: Selvin.

(4) A motion was made by Senator Cobey and seconded by Mr. Stanton to approve the principle that offers by the condemnor to third parties with regard to comparable property should not be admitted. The motion carried:

Aye: Bradley, Cobey, Gustafson, McDonough, Stanton.

No: Dieden, Grover, Matthews, Selvin.

C. Options

(1) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that options relating to the subject property introduced on behalf of the condemnor should be admitted as admissions against the condemnee. The motion carried:

Aye: Cobey, Grover, Gustafson, Matthews, McDonough, Selvin, Stanton.

No: Bradley, Dieden.

(2) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that options relating to the subject property introduced on behalf of the condemnee should not be admitted. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough, Selvin,  
Stanton.

No: Dieden.

(3) A motion was made by Senator Cobey and seconded by Mr. Stanton to approve the principle that options relating to comparable property should not be admitted. The motion carried:

Aye: Bradley, Cobey, Grover, Gustafson, Matthews, McDonough, Selvin,  
Stanton.

No: Dieden.

D. Sales Contracts

(1) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that sales contracts relating to the subject property made in good faith should be admitted. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

(2) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that the sales contracts relating to comparable property should be admitted. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

E. Assessed Value

(1) A motion was made by Mr. McDonough and seconded by Mr. Grover to approve the principle that assessed valuations should not be admitted. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

F. Admissibility of Evidence on Direct and Cross-examination

(1) A motion was made by Senator Cobey and seconded by Mr. Dieden to approve the principle that evidence inadmissible on direct examination should not be admissible on cross-examination; however, if inadmissible evidence is introduced on direct examination without or over objection, the witness may be fully cross-examined upon the matters covered in the direct examination. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

G. Hearsay Evidence

(1) A motion was made by Senator Cobey and seconded by Mr. Stanton to approve the principle that hearsay testimony with regard to market data given by an expert to support his opinion of the value of the subject property should be admitted as independent evidence of market value subject, however, to discovery procedures that would make it possible for the opposing party to check such market data prior to trial. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Stanton.

No: Bradley, Grover, McDonough.

Pass: Selvin.

(2) A motion was made by Senator Cobey and seconded by Mr. Matthews to approve the principle that hearsay testimony with regard to market data given by an owner to support his opinion of the value of the subject property should be admitted as independent evidence of value subject, however, to adequate discovery procedures. The motion carried:

Aye: Cobey, Dieden, Grover, Gustafson, Matthews, McDonough, Stanton.

No: Bradley, Selvin.

(3) A motion was made by Mr. McDonough and seconded by Mr. Grover to approve the principle that the hearsay testimony of any person in regard to market data should be admitted. The motion did not carry:

Aye: Grover, Gustafson, McDonough.

No: Bradley, Cobey, Dieden, Matthews, Selvin, Stanton.

#### H. Correction of Minutes

(1) A motion was made by Mr. Gustafson, seconded by Mr. McDonough, and adopted to correct page 22 of the minutes of the November 27-28 meeting to accurately state the action of the Commission taken at that time that admissible evidence of market data should be received as independent evidence of the value of the subject property and not merely as in support of an expert's opinion. Senator Cobey did not vote on this motion. (See correction of minutes, page 2 supra.)

#### I. Opinion Evidence

(1) A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve the principle that the draft statute should provide

that the jury is limited in its determination of market value to the opinion evidence of experts. The motion did not carry:

Aye: Bradley, Cobey, Gustafson, Stanton.

No: Dieden, Grover, Matthews, McDonough, Selvin.

J. Condemnation Proceedings

(1) A motion was made by Senator Cobey and seconded by Mr. Selvin to approve the principle that the draft statute should not specifically require that the judge find that, as a condition of the admissibility of evidence of market data, the condemnation proceeding did not substantially affect such data. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, Matthews, McDonough,  
Selvin, Stanton.

No: None.

K. Capitalization of Income

(1) A motion was made by Senator Cobey and seconded by Mr. Stanton to approve the principle that the capitalization of the income from the subject property should be admitted as an additional method of proving market value. The motion carried:

Aye: Cobey, Dieden, Grover, Gustafson, Stanton.

No: Bradley.

Pass: Matthews, McDonough, Selvin.

(2) A motion was made by Mr. Gustafson and seconded by Senator Cobey to approve the principle that an expert's hearsay testimony as to income and capitalization matters in support of his opinion should be admitted. The motion carried:

Aye: Cobey, Dieden, Gustafson, Selvin, Stanton.

No: Bradley, Matthews, McDonough.

Pass: Grover.

(3) A motion was made by Senator Cobey and seconded by Mr. McDonough to approve the principle that evidence relating to income from the subject property and the capitalization rate should be received as independent evidence of the market value. The motion did not carry:

Aye: Cobey, Dieden, Matthews, McDonough.

No: Bradley, Grover, Gustafson, Selvin, Stanton.

(4) A motion was made by Mr. McDonough and seconded by Mr. Gustafson to approve the principle that evidence as to income and capitalization rates is not independent evidence of value but should be admitted only as in explanation of an expert's opinion. A person is not deemed to be an expert by reason of ownership of the subject property for the purpose of this motion. The motion carried:

Aye: Cobey, Dieden, Gustafson, McDonough, Selvin.

No: Bradley, Grover, Matthews, Stanton.

(5) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principles that only an expert qualified for reasons other than

Minutes - Regular Meeting  
December 18 and 19, 1959

ownership of the subject property can give an opinion as to the value of the property based upon the capitalization of the income therefrom, and that the jury cannot independently find the value of the property from capitalization of income testimony introduced, but must base any finding of value derived from capitalizing the income from the subject property upon the opinion of an expert; however, the jury can base a finding on the opinion of an expert as to the value of the property based on the capitalization of the income therefrom without regard to the ultimate opinion given by the expert as to the value of the property. The motion carried:

Aye: Cobey, Dieden, Grover, Gustafson, Matthews, McDonough.

No: Bradley, Selvin, Stanton.

(6) A motion was made by Mr. McDonough and seconded by Senator Cobey to approve the principle that capitalization of income from comparable property should not be used as a basis to establish the value of subject property; but evidence of the sales price of and the income from comparable property can be considered to determine the capitalization rate to be applied to the income from the subject property, and the rental value of comparable property can be considered to determine the fair rental value of subject property. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, McDonough, Stanton.

No: Bradley, Grover, Selvin.

L. Reproduction Less Depreciation

(1) A motion was made by Senator Cobey and seconded by Mr. Stanton to approve the principle that the reproduction less depreciation approach should be admitted as an additional method of proving market value. The motion carried:

Aye: Cobey, Dieden, Grover, Gustafson, Matthews, Stanton.

No: Bradley.

Pass: McDonough.

Not Present: Selvin.

(2) A motion was made by Mr. Gustafson and seconded by Mr. Stanton to apply the same principles approved by the Commission relating to the capitalization of income approach to the reproduction less depreciation approach. The motion carried:

Aye: Cobey, Dieden, Gustafson, McDonough, Stanton.

No: Bradley, Matthews.

Pass: Grover.

Not Present: Selvin.

M. Other Evidence

(1) A motion was made by Senator Cobey and seconded to approve the principle that, subject to the exclusionary rules already adopted by the Commission, all other evidence that a well informed prospective buyer or seller would take into consideration in deciding what price to pay or demand for the subject property should be admitted. The motion did not carry:

Minutes - Regular Meeting  
December 18 and 19, 1959

Aye: Cobey, Dieden, Stanton.

No: Bradley, Grover, Gustafson, Matthews, McDonough, Selvin.

(2) A motion was made by Mr. Stanton and seconded by Senator Cobey to approve the principle that, subject to the exclusionary rules already adopted by the Commission, an expert may give as reasons in support of his opinion any other evidence that a well informed prospective buyer or seller would take into consideration in deciding what price to pay or demand for the property; but, such evidence should not be deemed independent evidence of value. The motion did not carry:

Aye: Cobey, Dieden, Stanton.

No: Bradley, Grover, Gustafson, Matthews, McDonough, Selvin.

(3) The motion was made by Mr. Grover and seconded by Senator Cobey to approve the principle that, subject to the exclusionary rules already adopted by the Commission, nothing in the proposed statute is intended to prevent bringing out, either on direct or cross-examination, the reasons for an expert's opinion of market value, but such reasons shall not be treated as direct independent evidence of value. The motion carried:

Aye: Dieden, Grover, Gustafson, Matthews, Stanton.

No: Bradley, McDonough.

Pass: Cobey, Selvin.

Minutes - Regular Meeting  
December 18 and 19, 1959

E. Study No. 51 - Right to Support After Ex Parte Divorce. The Commission considered Memorandum No. 8 (12/11/59) and the attached material, consisting of an analysis of the Hudson case and a staff recommendation. (A copy of each of these items is attached hereto.) After the matter was discussed a motion was made by Mr. Dieden, seconded by Mr. Grover, and unanimously adopted to approve the staff recommendation and to defer further consideration of this topic until after the 1961 Legislative Session.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary