Minutes

Date of Meeting: February 13-14, 1959
Date of Memo: February 5, 1959

MEMORANDUM NO. 1

SUBJECT: Presentation of bills to Senate Interim Judiciary Committee.

This memorandum presents an account of our dealings with the Senate Interim Judiciary Committee since the last meeting, including the Committee's action on several of our bills which were presented to it on February 4, 1959. This last raises several questions relating to possible amendment of some of the bills involved.

The Senate Interim Judiciary Committee has, since the 1957 Session, been working on the theory that all bills within the jurisdiction of the standing Senate Judiciary Committee which are either controversial or complex should be heard by the Interim Committee between legislative sessions rather than by the standing Committee during sessions. This theory contemplates (1) that if a controversial or complex bill not heard during the previous interim is referred to the Senate Judiciary Committee it will automatically be tabled with a recommendation that it be referred for interim study; and (2) that when a bill which the Interim Committee has heard and approved comes up for hearing by the standing Committee during the Session it will automatically receive a do-pass recommendation without further hearing (at least if no concerted opposition appears). It remains, of course, to be seen whether the theory will work out in practice. I gather that it is conceded that it will not work in all cases during the present session because it is novel but the thought of its proponents is that everyone will be put on notice

during the present session that the theory will be acted upon in the future.

We have not raised any objection to this new theory of the operation of the standing and interim Senate Judiciary Committees. We were in touch with John Bohn, Counsel for the Senate Interim Judiciary Committee, during the last interim with a view to setting our bills for hearing by that Committee before the present session began. In fact, however, this did not come about. This was due in part to the fact that a number of our bills were not actually in final form until the end of 1958, in part because we had not heard from the State Bar on those bills which were completed early enough so that we could have scheduled them for hearing during the interim, and in part because Mr. Bohn was unable to get enough Interim Committee hearings scheduled to accommodate all interested groups and reserved the hearings at the end of the interim period for the State Bar.

Toward the end of the interim period we learned that the Senate Interim Judiciary Committee was planning to continue its work during the first 30 days of the 1959 Session and had scheduled hearings of the State Bar's legislative program during that period. (It had turned out that the State Bar was not ready to present its legislative program during the interim; indeed, the Bar's program has still not been presented.) We then suggested to Mr. Bohn that it might be better all around for the Law Revision Commission to present its legislative program also during the 30 day period. Mr. Bohn agreed to this and a presentation date of January 6 and 7 was originally agreed upon. At Mr. Bohn's suggestion this was later changed to January 14 and 15 and then again changed to January 28 and 29. When I appeared at the hearing scheduled for January 28, however, there were not enough members of the Committee present to make a presentation of our program worthwhile and it was

agreed to continue the hearing to February 4 and 5. I presented several matters to the Committee yesterday (February 4) and it was agreed that a quorum would not be present today and the presentation of the balance of our program was continued to February 18.

At the abortive January 28 meeting statements were made by the Chairman of the Senate Interim Judiciary Committee, Senator Grunsky, and by Mr. Bohn to the effect that controversial or complex bills which had not been heard during the interim would not be heard by the standing Committee during the Session. Senator Shaw raised the question whether this would apply to the Law Revision Commission and pointed out that the situation on that day was that the Commission was ready to present its program and the Committee was not ready to hear it. In the ensuing discussion, it seemed to be agreed by all concerned that the Commission had been cooperating with the Interim Committee and that the rule announced would not apply to the Commission's bills.

At the meeting of the Interim Committee yesterday the following events transpired:

1. The Committee agreed to recommend to the standing Committee that it approve AB 404, the grand jury recodification bill.*

2. The Committee agreed to recommend to the standing Committee that it approve SB 166, the bill abolishing the doctrine of worthier title.

3. AB 403, the bill to amend Sections 2201, 3901 and 3904 of the Corporations Code, relating to sales of all or substantially all of the assets of a corporation, was also presented to the Committee. We ran into some

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* In the case of each such recommendation reported herein Senator Grunsky stated that the Interim Committee's recommendation would be that the standing Committee's action be taken "without the apparent necessity for hearing further testimony."

problems here. Several members of the Committee seemed disposed to believe that the Corporations Code should require that written notice be given to all stockholders when such a sale is made with the written consent of the majority -- i.e., they questioned the Commission's decision not to recommend a substantive change in this respect. In addition, Senator Grunsky raised a question concerning the proposed amendment of Section 3904; he seemed to be concerned that this might create an opportunity to insulate a transaction fraudulent as to minority stockholders from effective action to set it aside. In the course of the ensuing discussion I stated that we had consulted Professor Jennings and Mr. Sterling on the matter and that the Commission's decision not to recommend that written notice be given to all stockholders was based in part on their belief that such notice is not necessary. At this point the question was raised whether we had consulted others and it became necessary for me to state that the State Bar Committee on Corporations had opposed AB 403 and that we were in the process of trying to eliminate this disagreement. At this point Senator Grunsky stated that he thought that in view of this lack of agreement between the Commission and the State Bar any decision taken by the Interim Committee would be premature. My understanding is that AB 403 will, therefore, be heard by the standing Committee without any further Interim Committee hearing or recommendation.

4. I next presented AB 400 relating to the overlapping Penal and Vehicle Code sections concerned with the taking of vehicles. We ran into considerable difficulty on this one. First, Senator Richards questioned whether the word "bicycle" should appear in revised Section 499b, thus making it a felony to take a bicycle with the intent to permanently deprive the owner of title to or possession of it. He pointed out that in its present

form Section 499b makes such a taking only a misdemeanor and that Vehicle Code Section 503 which makes a permanent taking a felony applies only to "a vehicle." The Committee agreed that "bicycle" should be eliminated. This led to the further question whether "automobile, motorcycle or other vehicle" were the best words to describe the kind of property within the reach of the section. At the end of this discussion it was agreed that there should be inserted, in lieu thereof, "self-propelled vehicle," this language being taken from Section 32 of the Vehicle Code which defines "motor vehicle" as "a vehicle which is self-propelled."

Senator Christianson was unsympathetic toward the whole idea of the bill, his position being that the present situation, with Penal Code Sections 487 and 499b and Civil Code Section 503 on the books, gives the district attorney a latitude which he ought to have in charging, considering the variety of offenses and offenders he has to deal with. He seemed to think, in particular, that the district attorney should continue to be able to charge a person who had temporarily taken a vehicle with a felony when the case is an aggravated one. Ultimately, however, the Committee agreed to recommend to the standing Committee that it approve AB 400 (as revised to substitute "self-propelled vehicle" for "automobile, bicycle, motorcycle or other vehicle").

5. I then presented AB 402 relating to the Penal and Vehicle Code sections concerned with drunk driving. The Committee decidedly disapproved the Commission's proposal to eliminate "upon any highway" from Vehicle Code Section 502. Senator Grunsky opposed it on the ground that the Vehicle Code should not contain provisions proscribing conduct not occurring upon a highway. Senator Regan opposed the proposed amendment on the ground that in part of

the state there are large areas of private property on which people drive vehicles and that such driving may, on occasion, be done after having a few drinks. He was concerned that the amendment of Section 502 would bring such conduct within the jurisdiction of the Highway Patrol. The Committee agreed, however, that the law should proscribe drunk driving other than on highways and it was agreed that this should be accomplished by the following amendment of Section 367d of the Penal Code:

> 367d. Any person operating or driving an automobile, motorcycle or other motor vehicle, other than upon a highway, who becomes or is intoxicated while so engaged in operating or driving such automobile, motorcycle or other motor vehicle shall be guilty of a misdemeanor.

In this case no consideration was given to the possibility of substituting other language for "automobile, motorcycle or other motor vehicle." The Committee then approved the repeal of Section 367e of the Penal Code. (I do not recall that the Committee took any formal action on A.B. 402.)

6. After lunch we took up the claims study. The Committee seemed to be definitely favorable to the Commission's general objective here. However, various questions were raised as we got into matters of detail. The members of the Committee were quite resistant at the outset to the Commission's decision to exclude the State from the new general claims statute. I explained the reasons for the decision and we went on to other matters, but I am not certain that all of the members of the Committee were convinced. Various members of the Committee were also disposed to question the Commission's failure to make a recommendation relating to the filing of a claim as a prerequisite to suit against a public officer or employee. I explained, of course, that the Commission intends to make a recommendation on this subject later and I believe that this decision was accepted, although

with obvious reluctance on the part of some members.

It was agreed that the title of Chapter 2 should be revised to read "Claims Against Local Public Entities."

With these preliminaries out of the way we turned to Article 2 of the new general claims statute and I was able to present Sections 710 through 715 in the time which was available. Various questions were raised at various points by various members and I suspect that some of them were not convinced on some points. Nevertheless, I sensed that the Committee was generally inclined to favor Sections 710 through 715, with the following amendments:

(a) A question was raised with respect to the words "the residence or business address of the person presenting it" at the end of Section 713. The thought expressed was that this might be construed to mean that notice need not be given if the claim, while containing an address of the person presenting it misstated that address in some minor particular which would not preclude a letter sent to him at that address from reaching him. It was agreed, therefore, that the words quoted should be changed to read: "a residence or business address of the person presenting it." In the course of this discussion it was also agreed that Section 712 should not require the governing board to "give the person presenting the claim written notice of its insufficiency" but rather should provide that the governing board should "mail to the person presenting the claim at the address, if any, of such person appearing on the claim written notice of its insufficiency."

(b) A question was raised whether Section 713, in providing that a local public entity may "assert as a defense" either that no claim was presented or that a claim as presented did not comply with Section 711,

might be interpreted as requiring this defense to be asserted as an affirmative defense, thus abrogating the present rule that a complaint filed against a public entity covered by a claims statute is demurrable unless it alleges either that a claim has been presented or facts excusing the plaintiff's failure to do so. I stated that I did not understand this to be the Commission's intention and it was agreed that Section 713 should be revised to eliminate any possibility of this construction being given. This might be done, I suggest, by adding the following paragraph to Section 713:

> A complaint or other pleading purporting to state against a local public entity a cause of action for which this Chapter requires a cause of action to be presented is demurrable unless it alleges either that such a claim has been presented in conformity with the provisions of this article or facts excusing the pleader's failure to do so.

(c) The Committee agreed that subsection (a) of Section 715 should be amended as follows:

> "(a) Claimant was ~~less-than-sixteen-(16)-years-of-age~~ a minor during all of such time or;"

A question was then raised whether the words "all of" should be included in subsection (b) of Section 715; it was suggested that as it stands this subsection would be unjust as applied to a person who during the course of the claim filing period had only one or a few relatively short periods of lucidity. I do not recall that any definite decision was reached by the Committee on this question but the Commission may wish to reconsider it.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary