

Date of Meeting: October 23-24, 1959

Date of Memo: October 14, 1959

Memorandum No. 3-A

Subject: Annual Report (Unconstitutional Statutes).

The Commission's proposed 1960 Annual Report states that the Supreme Court in *People v. Chessman*, 52 Adv. Cal. 481, held Section 1060(g) of the Government Code (relating to residence and office requirement of justices of the Supreme Court) unconstitutional. The opinion in that case is not clear as to whether the court held the statute to be unconstitutional and following analysis is intended to be helpful to the Commission in determining whether or not to recommend repeal of Gov. Code § 1060 (g) in the 1960 Annual Report.

Government Code Section 1060 provides in part:

The following officers shall reside at and keep their offices in the City of Sacramento:

* * *

(g) Justices of the Supreme Court.

The relevant portion of the *Chessman* case states:

Qualification of Justices of This Court. Defendant asserts that the justices of this court are "jurisdictionally foreclosed" from deciding this (or any other) case because they have not complied with the provision of section 1060 of the Government Code that they "shall reside at and keep their offices in the City of Sacramento." The state Constitution (art. VI, § 23) provides that "No person shall be eligible to the office of a Justice of the Supreme Court, or of a district court of appeal, or of a judge of

a superior court, or of a municipal court, unless he shall have been admitted to practice before the Supreme Court of the State for a period of at least five years immediately preceding his election or appointment to such office . . ." This constitutional requirement is generally regarded as exclusive and legislative attempts to add qualifications have been held unconstitutional. (Wallace v. Superior Court (1956), 141 Cal. App.2d 771, 774-782; Chambers v. Terry (1940), 40 Cal. App.2d 153, 154-156) When a candidate for justice meets the requirement of section 23 of article VI and, after election or appointment, qualifies by taking the oath provided by section 3 of article XX, the Legislature cannot properly require, by way of additional qualification, anything (such as change of residence) which has no reasonable relation to the performance of his duties.

An analysis of the opinion indicates that the court held that the Legislature cannot constitutionally impose a residence requirement as an additional qualification for office. Therefore, since compliance with the statute was not a qualification for office, the court was not "jurisdictionally foreclosed" from deciding cases because of non-compliance with Gov. Code § 1060(g).

The holding in the case does not necessarily mean, however, that the statute is unconstitutional for the case only deals with whether such statute could constitutionally deprive the court of jurisdiction. The court might, for example, uphold the statute in a case where the question of compliance was presented by a statutory requirement that each justice certify that he was complying with Gov. Code § 1060(g) before he would receive his salary. In other words, while noncompliance with Gov. Code § 1060(g) could not constitutionally deprive the court of its jurisdiction, it could be argued that the case does not necessarily hold that the statute is unconstitutional and could not be enforced by other means.

Respectfully submitted,

John H. DeMouly,
Executive Secretary