

State Bar Building
601 McAllister Street
San Francisco

A G E N D A

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

June 16-18, 1960

Thursday, June 16

1. Minutes of May 1960 Meeting (sent 6/8/60)
2. Study No. 23 - Rescission of Contracts
See: Memorandum No. 54 (1960) (to be sent)
Study on Rescission of Contracts (you have this study)
3. Study No. 37(L) - Claims Against Public Officers and Employees
See Memorandum No. 53 (1960)(sent 6/8/60)
4. Study No. 34(L) - Uniform Rules of Evidence
See Memorandum No. 55(1960)(sent 6/9/60)

Friday, June 17

1. Preliminary budget decisions (Dean Spaeth of Stanford will be present at 9:00 a.m.)
See Memorandum No. 51 (1960)(enclosed)
2. Study No. 32 - Arbitration (Mr. Kagel will be present)
See: Memorandum No. 48 (1960) (sent 6/8/60)
Study by Kagel (you have this study)
Printed Pamphlet containing Uniform Arbitration Act
3. Study No. 38 - Inter Vivos Rights
See: Memorandum No. 49 (1960) (enclosed)
Study by Marsh (you have this study)

Saturday, June 18

1. Study No. 36(L) - Condemnation (Mr. Nibley will be present)
See: Memorandum No. 50 (1960) (taking possession)(to be sent)
Memorandum No. 52 (1960) (apportionment of award)(enclosed)
Study on Apportionment of Award (sent 6/9/60)

MINUTES OF MEETING

of

June 16, 17 and 18, 1960

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on June 16, 17 and 18, 1960.

Present: Roy A. Gustafson, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable Clark L. Bradley
Honorable James A. Cobey (June 16 and 17)
Leonard J. Dieden (June 16 and 17)
George G. Grover
Herman F. Selvin
Thomas E. Stanton, Jr.
Ralph N. Kleps, Ex Officio (June 16 and 17)

Absent: Vaino H. Spencer

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

Dean Carl B. Spaeth of the School of Law, Stanford University, was present during part of the meeting on June 16.

Mr. Sam Kagel, research consultant for Study No. 32 - Arbitration, was present during part of the meeting on June 17.

Mr. Robert Nibley of the law firm of Hill, Farrer & Burrill of Los Angeles, research consultant for Study No. 36(L) - Condemnation, was present during part of the meeting on June 18.

After the following corrections were made, a motion was made, seconded and unanimously adopted to approve the minutes of the meeting held on May 20 and 21, 1960.

Page 2. The spelling of the word "intended" was corrected in the

second line.

Page 7. In paragraph (b), delete "California court or court of competent jurisdiction in any other state" and insert "court of competent jurisdiction in California or in any other state."

I. ADMINISTRATIVE MATTERS

A. 1961-62 Preliminary Budget Report:

Rental Charge for Office Space

The Commission had before it Memorandum No. 51(1960) and a copy of the amount allocated to the Commission for its 1961-62 budget.

Dean Spaeth reported that Stanford University does not intend to raise the 15 per cent overhead charge on the research contract between Stanford and the Commission but that the University is of the opinion that the Commission should pay rent for its office space at Stanford. Dean Spaeth suggested a rental charge of 12 1/2 cents per square foot per year for 1,000 square feet (\$1,500 a year). During the discussion Mr. Bradley suggested a payment of 25 cents a square foot for 500 square feet. This amount would permit payment of a rental charge on the amount of space occupied by the Commission that is in excess of the amount originally made available by Stanford when the Commission was established at Stanford. After the matter was discussed the Executive Secretary was directed to include \$1,500 (25 cents for 500 square feet) for this item in the tentative 1961-62 budget.

Additional Temporary Clerical Help

A motion was made, seconded and unanimously adopted to include in the 1961-62 budget an amount of money equal to the salary of one full-time intermediate stenographer-clerk to cover the salaries of the intermittent clerical workers employed by the Commission.

Minutes - Regular Meeting
June 16, 17 and 18, 1960

Reclassification of Junior Counsel to Assistant Counsel

A motion was made, seconded and unanimously adopted to include in the 1961-62 budget a sufficient amount of money to finance a reclassification of the Junior Counsel position to Assistant Counsel.

Minutes - Regular Meeting
June 16, 17 and 18, 1960

B. Scheduled Commission Meetings: Future Commission meetings have been rescheduled for:

July 22 and 23 in Los Angeles.

August 18, 19 and 20 in San Francisco (no change of date).

September 26, 27 and 28 in Los Angeles. (The Commission will determine at a later date whether it will meet on the third day, Wednesday, September 28.)

II. CURRENT STUDIES

A. Study No. 23 - Rescission of Contracts: The Commission had before it Memorandum No. 54(1960) (a draft bill designed to preserve judicial rescission), a memorandum (6/15/60) listing the alternative approaches available to the Commission and a memorandum prepared by Mr. McDonough (6/14/60) (a draft bill designed to preserve both rescissional remedies).

A motion was made by Mr. Bradley and seconded by Mr. Dieden to retain both judicial and out-of-court rescissional remedies but to eliminate the differences that have caused the problems. The motion carried.

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

No: Grover, Selvin.

Not Present: Cobey, Spencer.

Retention of Both Types Rescission with a Single Procedure

The various sections in the proposed draft bill designed to preserve the existing duality of rescissional remedies were approved with the following revisions:

Section 1689. The word "only" was deleted from the first sentence.

During the discussion of subdivision 1 Mr. Selvin raised the question of the desirability of including Section 3407 of the Civil Code relating to restoration where rescission is for mistake in the new Section 1689. The staff is to review this matter and submit its findings.

Subdivision 5 was deleted.

In subdivision 8 a comma was substituted for "or" after "Corporations Code" and the words "or any other statute providing for rescission" were

added to the end of the sentence.

Section 1690. Section 1690 was revised to read:

A party to a contract may rescind the same by consent of all the other parties.

Section 1691. The word "if" was substituted for "when," a comma was added after "Section 1689" and the words "as to himself" were deleted.

Section 1692. Section 1692 was revised to read:

When a contract has been rescinded in whole or in part pursuant to Section 1690 or Section 1691, any party to the contract may bring an action to recover any money or thing owing to him by any other party to the contract as a consequence of such rescission or for any other relief to which he may be entitled under the circumstances.

Section 1693. In the first line the word "if" was substituted for "when," the bracketed material of the second line was deleted, the words "as to himself" in the third and fourth lines were deleted, and the last sentence of Section 1693 relating to juries was deleted.

B. Study No. 32 - Arbitration: The Commission had before it Memorandum No. 48(1960) containing Exhibit I - (portion of the Arbitration Statute previously considered), Exhibit II - (remainder of staff's draft statute not yet considered) and Exhibit III - (remainder of consultant's draft not yet considered), the research study prepared by Mr. Sam Kagel and a copy of the Uniform Arbitration Act.

During the discussion Mr. Kagel stated that he believed that Senate Bill No. 1185 (1959), relating to arbitration, was under consideration by the Senate Interim Judiciary Committee. It was agreed that the Executive Secretary should contact Mr. John Bohn, committee counsel, and advise him that the Commission is making a comprehensive study of California's Arbitration law and procedure and will submit its recommendation on this subject in 1961.

Exhibit I - Arbitration Statute Previously Considered by the Commission

The proposed draft bill contained in Exhibit I was approved with the following changes:

Section 1281. This section was revised to read:

A written agreement to submit to arbitration any existing controversy or any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.

Section 1282. In subdivision (1) the word "a" was substituted for "the opposing," the word "thereto" was inserted before the word "refuses," the deleted word "such" was reinserted and the words "to arbitrate the controversy," in the fourth and fifth lines were deleted.

In subdivision (3) and consistently throughout the Arbitration Statute the phrase "an order to arbitrate" is to be substituted for the phrase "an order for arbitration."

Section 1283. Section 1283 was deleted.

Section 1284. In subdivision (2) the word "undetermined" was substituted for "undecided" and the word "determined" is to be substituted for "decided."

In subdivision (3) the words "to that issue" were substituted for "thereto."

Section 1285. In the second line of subdivision (1) the word "otherwise" was added before the word "agree."

Section 1286. The phrase "under Sections 1287 and 1289" was inserted between "arbitrator" and "may" in the second line. The phrase "or, by unanimous agreement of the neutral arbitrators, such powers and duties may be delegated to one of their number" was added to the end of subdivision (3).

Section 1287. In subdivision (6) the deleted words "the parties" and "meet it" were reinserted and the words "each party" and "show that such information is not accurate" were deleted.

Section 1288. The word "any" was substituted for "no" and the words "may be revoked" were substituted for "is binding."

Section 1289. In subdivision (2) the words "or affirmations" were added after the word "oaths."

Section 1290. In the third sentence of subdivision (1) the word "serve" was substituted for "deliver" and the word "on" was substituted for "to"

preceding "each party."

In the first sentence of subdivision (2) the word "petition" was substituted for "motion"; in the second sentence, the words "in writing" were deleted; and in the last sentence, the word "gives" was substituted for "notifies," the words "written notice" were added after the word "arbitrators," the word "service" was substituted for "delivery" and the word "on" was substituted for "to" following the word "award."

Exhibit II - Remainder of Draft Statute prepared by the staff

The proposed draft bill contained in Exhibit II is approved with the following changes:

Definition of "Service." A new section is to be added to the proposed Arbitration Statute defining service.

Section 1291. This section is to be revised to indicate clearly that the application is to be written and served on all the parties to the arbitration not later than 10 days after service of a signed copy of the award and that any other party to the arbitration shall serve a written statement of his objections on all the parties and shall deliver the objections to the arbitrator.

Section 1292. The second clause is revised to read: "each party shall pay his pro rata share of the expenses and fees of the neutral arbitrator."

Section 1293. A motion was made and seconded to approve the principle of Section 1293 which provides that within one year after delivery of the

Minutes - Regular Meeting
June 16, 17 and 18, 1960

award the party may file the award with the clerk who shall enter the award as if it were a judgment in an action. The motion carried:

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

No: Stanton.

Not Present: Bradley, Spencer.

A motion was then made, seconded and carried to reconsider the above action approving the principle of Section 1293.

A motion was then made to approve the principle of the confirmation of an arbitration award and the entry of judgment in conformity with the award. The motion carried:

Aye: Gustafson, McDonough, Selvin, Stanton.

No: Dieden, Grover.

Not Present: Bradley, Cobey, Spencer.

Section 1293 is to be revised to effectuate the above action, and other necessary revisions in the proposed Arbitration Statute are to be made.

Section 1294. In subdivision (1) the words "an aggrieved party to the arbitration" were substituted for "a party" and the word "superior" was deleted.

Subdivision (1)(b) is to be revised to provide that the court shall vacate an award if there is corruption in any of the arbitrators, and a new subdivision is to be added to provide that the court shall vacate an award if the rights of the petitioner were substantially prejudiced by misconduct of the neutral arbitrator.

Subdivision (1)(d) is to be revised by relocating the substance of the last phrase of this subdivision to the beginning of the subdivision.

Subdivision (1)(e) was deleted.

Subdivision (2) was revised to read:

A petition under this section shall be filed within 90 days after service of a signed copy of the award on the petitioner.

Section 1295. The first portion of subdivision (1) was revised to read:

Upon petition of any party to the arbitration made within 90 days after the service of a signed copy of the award on the petitioner, the court shall modify or correct the award if:

Subdivision (2) is to be revised to conform to the Uniform Act provision on confirmation of awards.

Section 1296. Subdivision (1) was deleted.

Subdivision (2) is to be revised to provide that the court shall confirm the award only upon request of a party.

Section 1297. Section 1290(a) of Exhibit III was substituted for Section 1297 of Exhibit II with the following revisions: The word "petition" was substituted for "motion" throughout the section, in subdivision (1) the word "may" was substituted for "shall" preceding the words "be filed" and a comma was added after the word "agreement."

A provision is to be added that where the arbitration has not been held in a specific county of this State, the parties may file a petition after arbitration proceedings in any county in the State.

Section 1298. The second sentence of subdivision (1) is to be revised to provide that unless the parties have appeared at the hearing notice of a petition is to be served in the same manner as provided by law for service of summons in an action.

In the first sentence of subdivision (2) the word "confirming," was

Minutes - Regular Meeting
June 16, 17 and 18, 1960

added before the word "vacating." The words "if in writing" were added to the end of subdivision (2)(a). Another provision is to be added to subdivision (2) to provide that a statement of the substance of the agreement to arbitrate, if not in writing, must be attached to the petition, subdivision (2)(c) was deleted.

Subdivision (4) was revised to read:

Findings of fact and conclusions of law need not be made by the court upon the determination of a petition or motion under this title.

Section 1299. In subdivision (1)(a) the word "petition" was substituted for "motion," and "subdivision (1) of" was inserted before "Section 1282." Subdivision (1)(b) was deleted. Subdivision (1)(c) is to be revised to make it clear that an appeal may be taken from an order either granting or denying a petition to confirm, modify, correct or vacate an award. Reference to a rehearing should be deleted unless the arbitration statute does provide for a rehearing.

Subdivision (2) was revised to read:

The appeal shall be taken in the manner, and the scope of review on the appeal shall be the same as on appeals from orders or judgments in a civil action.

Section 1053. Approved without change.

Sections 1730 and 3390 of the Civil Code. Approved without change.

Section 1294 - Exhibit III. A new section is to be added to the Arbitration Statute to provide that the making of an arbitration agreement in California providing for arbitration in California is deemed consent to jurisdiction for the purpose of enforcing the agreement under the arbitration statute.

Minutes - Regular Meeting
June 16, 17 and 18, 1960

C. Study No. 34(L) - Uniform Rules of Evidence: The Commission considered Memorandum No. 55(1960) containing a portion of the proposed recommendation on Rule 63, its exceptions and related rules of the Uniform Rules of Evidence prepared by Mr. McDonough.

After the matter was discussed, the general format of the Recommendation as contained in Memorandum No. 55(1960) was approved. It was agreed that Rule 63 and its exceptions and related rules, as recommended by the Commission, should also be included at the end of the Recommendation as they would appear if enacted i.e., without strike-out type or italics. It was also agreed that it would not be necessary to repeat the introductory clause of Rule 63 with each exception.

During the discussion of the various comments it was pointed out that the comment relating to Exception (1)(c) should be revised to state that this exception as revised is broader than the present rule in that it admits evidence of a statement made without requiring that a foundation be laid for the admission of such evidence by having the declarant testify both that he recalls making the statement and that it was true when made.

Also, it was noted that the document or other record embodying the statement is admissible under the revised rule while under the present law the declarant reads the statement on the witness stand and it is not otherwise made a part of the record.

Mr. Gustafson suggested that the comment relating to Exception (6) should be revised in view of the recent Supreme Court decision which,

Minutes - Regular Meeting
June 16, 17 and 18, 1960

according to his recollection, held that there is no distinction between a confession and admission.

Mr. Gustafson reported that Mr. Joseph Ball, Chairman of the State Bar Committee to Study Uniform Rules of Evidence would like a joint meeting of the State Bar Committee and the Commission. It was agreed that Mr. Gustafson should talk to Mr. Ball and suggest that a joint meeting in January 1961 would be agreeable with the Commission.

D. Study No. 36(L) - Condemnation: The Commission had before it Memorandum No. 50(1960) (Taking Possession and Passage of Title) and attachments - the draft recommendation, Exhibit I (the proposed constitutional amendment), Exhibit II (the proposed bill not dependent on passage of the constitutional amendment) and Exhibit III (the proposed bill dependent on passage of the constitutional amendment) - a revised draft recommendation (6/16/60), revised Sections 3 (§ 1249.1) and 4 (§ 1252.1) of Exhibit II, and a proposed revision of Section 1248 of the Code of Civil Procedure.

Proposed Constitutional Amendment (Exhibit I)

The proposed amendment of Section 14 of Article I of the Constitution was approved with the following revisions:

(1) In the first sentence the word "owner" is to be substituted for "person whose property is taken or damaged."

(2) The third from last sentence was revised to read as follows:

The money deposited shall be paid promptly to the person entitled thereto in accordance with such procedure as the Legislature may by statute prescribe.

(3) The next to last sentence is revised by deleting the words "not inconsistent with this section" and substituting the word "by" for "for" which follows the word "entities."

Draft Statute Not Dependent on Constitutional Amendment (Exhibit II)

Section 1243.5

Section 1243.5 of the Code of Civil Procedure as presented in II-A was approved with the following changes:

(1) The word "acquire" was substituted for "obtain" in the first line of subdivision (2).

(2) The word "take" was substituted for "obtain" in the third line of subdivision (2).

(3) The word "thereof" was substituted for "of the property sought to be condemned" in the fourth line of subdivision (2).

(4) The words "sought to be condemned" were deleted from the sixth line of subdivision (2).

(5) In the ninth line of subdivision (2) the words "which will" are to be substituted for "to" and the deleted words "of the property" are to be reinserted.

(6) In subdivision (2)(a) "therein" was inserted after the word "interest" and the words "in the property" were deleted.

(7) In subdivision (2)(b) the word "state" was substituted for "describe."

(8) The first clause of subdivision (3) was revised to read:

At least 20 days prior to the date upon
which the plaintiff is authorized under the
order to take immediate possession, . . .

(9) In the fifth line of subdivision (3) the words "make personal service of" were substituted for "personally serve."

(10) The last portion of the next to last sentence in subdivision (3) was revised to read as follows:

the court may order that in lieu of such personal
service the plaintiff send a copy of the order
by registered or certified mail addressed to such
person at his last known address at least 20 days

prior to the date upon which the plaintiff is authorized to take possession of the property under the order.

(11) The last sentence of subdivision (3) is to be placed in a new subdivision. The word "may" is to be substituted for the word "shall," and the new subdivision is also to require that the deposit be made before plaintiff may take possession.

(12) The seventh line of subdivision (4) was revised to read "which will be made for the taking of the property and any damage"

(13) The words "the effect of" were deleted from subdivision (5), lines 6 and 13, and from lines 3 and 5 of subdivision (6).

(14) The word "take" was substituted for "obtain" in subdivision (5)(b).

(15) The order of the phrases in the last paragraph of subdivision (5) is to be reversed.

(16) The words "or appellate" were added between the words "trial" and "court" in subdivision (6). The last sentence of subdivision (6) was deleted.

(17) The words "stay or" were added before the word "vacate" in subdivision (7).

Section 1249.1 of the Code of Civil Procedure

Section 1249.1 as revised was approved with the following changes: The phrase "and which enhance its value for its highest and best use" was added after the words "service of summons," and the word "shall" was substituted for "may."

[Comment: Approval of Section 1249.1 is subject to reconsideration after the research consultant submits a report on the damages caused by service of summons during construction on the property sought to be condemned even though the property is not taken at that time.]

Section 1252.1 of the Code of Civil Procedure

Section 1252.1 as revised was approved with the following changes:

(1) In the second line of subdivision (1) the word "and" was substituted for ", or" and the words "ad valorem" preceding "special assessments" were deleted.

(2) The words "levied and collected as taxes," were deleted from the third line of subdivision (1).

(3) The last phrase of subdivision (1) beginning with the words "and the defendant is liable. . ." was deleted.

Section 1248 of the Code of Civil Procedure

The proposed revision of subdivision (8) of Section 1248 was approved after substituting the word "lien" for "indebtedness" and adding the words "ad valorem" before "taxes" and the word "special" before "assessments."

Section 1253 of the Code of Civil Procedure

Section 1253 was approved with the following changes:

(1) In subdivision (1) the word "certified" was inserted before the word "copy."

(2) In subdivision (2) "a certified copy of" was inserted after "the date that."

(3) In subdivision (3) the words "or not" were inserted after the word "whether" and the words "or subsequently" were deleted.

Section 1254 of the Code of Civil Procedure

Section 1254 was approved after making the latter portion of the first paragraph beginning with the words "The defendant who is entitled to the money. . . ." another paragraph.

Section 1255a of the Code of Civil Procedure

Section 1255a was approved with the following revisions:

In subdivision (4) the word "a" was substituted for the word "any" in the fourth line, the words "or such portion" were added after the word "property" in the sixth line. The last sentence was deleted.

Section 1255b of the Code of Civil Procedure

Section 1255b was approved with the following revisions:

(1) In subdivision (2)(a) the words "or Section 1254" were added after "Section 1243.5" and the words "or the date of entry of judgment, whichever is earlier" were deleted.

(2) Subdivision (2)(b) was deleted.

Effective Date Provision

Approved with no changes made.

Section 1243.5 (Exhibit III)

The proposed bill, dependent on the passage of the constitutional amendment, was approved as revised with the incorporation of the appropriate revisions which were made to the draft bill (Exhibit II) which is not dependent on passage of the constitutional amendment.

Revised Recommendation of Commission (6/16/60)

The revised recommendation (6/16/60) relating to taking possession and passage of title was approved after the following changes were made:

It was agreed that the reference to the Commission by its full title should be used sparingly.

Page 2. The first sentence of the first full paragraph was revised to read:

The statutes implementing the constitutional provision provide that, at least three days prior to the taking of possession, the condemner must either personally serve on or mail to the owners and occupants of the property a notice that possession is to be taken.

The words "made as required by the Constitution" were deleted from the last sentence in the first full paragraph.

The two paragraphs of subtopic 1 (beginning on page 2 and continuing on page 3) are to be reversed or made into one paragraph.

Page 3. In the first full paragraph the words "as little as" were substituted for the word "only," and in the fourth sentence the words "with no actual notice at all" were changed to read "without any actual notice in advance."

Minutes - Regular Meeting
June 16, 17 and 18, 1960

In the second paragraph in subtopic 2 the words "provide assurance" were substituted for "guarantee" and the words "that the property is to be taken" were deleted.

The recommendation relating to the determination of the owner from the latest secured assessment roll is to be more fully developed.

Page 4. In the fourth line of the first full paragraph the word "the" was deleted and the word "in" was added before the word "order."

Subtopic 4 relating to the amount of deposit required to be made was deleted.

The first part of the first sentence in subtopic 5 was revised to read "Although the Constitution requires the condemner to make a deposit and gives the condemnee the right to challenge the amount deposited, the right is in many cases illusory for, unless the property is taken"

Page 5. In the fourth line of subtopic 6 the word "of" was deleted.

Page 6. The first sentence of the first paragraph was deleted.

In the last paragraph, fourth line from the bottom of the page, the word "withdrawal" was substituted for "the payment." In the third line from the bottom the word "similar" was substituted for "specific." The phrase "upon payment of the deposit to the condemnee" was deleted from the last sentence.

Page 7. In the first paragraph the fourth line, the words "The reason is that" are to be substituted for "This is because." In the

ninth line, the word "such" was added before the word "taxes" and the words "that are a lien upon the property" were deleted.

In the second paragraph, first line, the words "There are two ambiguities, if not defects, in" were deleted. In the second line the words "is uncertain" were added after the word "property." In the seventh line the word "that" was substituted for the word "the" that precedes the word "time" and the words "of summons" were deleted. In the eighth line the words "open to" were substituted for "susceptible of."

Page 8. In the second line from the top, the word "service" was substituted for "issuance."

The words "and Special Assessments" were added after the word "taxes" in the title and throughout the text of the topic on taxes.

In the first line of the first full paragraph the words "takes either" were transposed to read "either takes," and in the second line the word "takes" was added before the word "possession."

Page 9. The words "in effect" were added in the first line after the word "forced."

In the fifth line of the first full paragraph the word "statutory" was deleted. In the sixth line the words "out of the deposit" were deleted and the words "he has" were added after the word "damage."
"From the loss of his property" was deleted.

Page 10. In the first full paragraph the words "After studying the law relating to immediate possession" were deleted. In the sixth line

the word "assure" was substituted for "guarantee."

In the first line of the second paragraph the words "these provisions" were substituted for "they."

Page 11. In the second sentence of the first full paragraph, the word "concurrent" was deleted and the word "concurrently" was added after the word "paid." The word "of" was added before the word "moving" in the last line of the first full paragraph.

Page 12. Cases supporting the discussion in paragraph No. 3 are to be included as footnotes.

Page 13. The words "within the period" were deleted from the last sentence of the last paragraph.

A motion was made, seconded and unanimously adopted to send the revised recommendation and proposed legislation relating to taking possession and passage of title in eminent domain proceedings to the State Bar for its views.

Minutes - Regular Meeting
June 16, 17 and 18, 1960

E. Study No. 37(L) - Claims against Public Officers and Employees:

The Commission had before it Memorandum No. 53(1960) containing Exhibit I - (Tentative Recommendation and Draft Bill) and Exhibit II - (an alternative last paragraph of the proposed recommendation).

Recommendation

During the discussion of the recommendation it was agreed that the recommendation should state (1) that the effect of the procedure requiring the presentation of claims against public officers and employees is to limit their substantive liability; and (2) that the requirement of filing a claim does not effectively limit the liability of public officers and employees and that there are other means available by which public officers and employees could be protected against the risk of unfounded litigation and the risk of personally having to pay a judgment.

Draft Bill

Proposed Section 801 of the Government Code is revised as follows:

The words "provision of a" were added before the word "charter" and the word "which" was substituted for "to the extent that it."

Respectfully submitted,

John H. DeMouilly
Executive Secretary