

Place of Meeting

State Bar Building
601 McAllister Street
San Francisco

A G E N D A

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

Friday, November 18, 1960

Meeting starts promptly at 9:00 a.m.

1. Minutes of October 1960 Meeting (sent 11/3/60)
2. Election of Chairman
3. Study No. 32 - Arbitration
See: Memorandum No. 95 (1960) (sent 11/3/60)
Uniform Arbitration Act (you have this)
4. Study No. 36(L) - Condemnation
See: Memorandum No. 96 (1960) (taking possession and passage
of title) (sent 11/9/60)
Memorandum No. 97 (1960) (pretrial conferences and discovery)
(sent 11/9/60)
Supplement to Memorandum No. 97 (1960) (enclosed)
Memorandum No. 78 (1960) (apportionment of award)
(sent 9/22/60)
Revised Supplement to Memorandum No. 78 (1960)
(sent 10/13/60)
5. Study No. 34(L) - Uniform Rules of Evidence
See: Memorandum No. 83 (1960) (privileges) (sent 8/31/60)
Various Supplements to Memorandum No. 83 (1960) (sent 9/8/60,
9/16/60 and other dates)

MINUTES OF MEETING

of

November 18, 1960

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on November 18, 1960.

Present: John R. McDonough, Jr., Vice Chairman
George G. Grover
Roy A. Gustafson
Herman F. Selvin
Vaino H. Spencer
Thomas E. Stanton, Jr.
Ralph N. Kleps, ex officio

Absent: Honorable Clark L. Bradley
Honorable James A. Cobey

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

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

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

Messrs. Holloway Jones and Robert Carlson from the Department of Public Works were present for part of the meeting.

A motion was adopted to approve the minutes of the meeting held on October 21 and 22, 1960, after the following changes were made:

Page 12. In the fifth line after "modified" insert "or corrected."

Page 13. Insert a semicolon after "Taking Possession" in the fourth line.

Page 16. In the second line of the indented material, delete "on" at the end of the line and insert "of."

Page 19. In the seventh line, delete the comma after "Assistant Chief."

Minutes - Regular Meeting
November 18, 1960

I. ADMINISTRATIVE MATTERS

A. Election of Chairman: The election of chairman was deferred to a time when a fuller representation of the Commission will be present.

B. Scheduled Commission Meetings: The December meeting of the Commission was originally scheduled for December 16 and 17 in Los Angeles. The Executive Secretary was directed to make a post card poll of Commission members to determine whether a three-day meeting could be held on December 8, 9 and 10 or on December 15, 16 and 17. The meeting will be held in Los Angeles.

C. Expression of Appreciation to Board of Governors for Their Support of Proposition No. 9. A motion was adopted that the Vice-Chairman express to the Board of Governors of the State Bar the appreciation of the Law Revision Commission for the support that the Board of Governors gave Proposition No. 9. Proposition No. 9, a constitutional amendment recommended by the Commission, was approved by the people at the 1960 General Election.

D. Form of Commission's Bills: The Legislative Counsel raised two questions concerning the form of the bills prepared by the Law Revision Commission. He believes that the bills in the 1961 legislative program (1) use many more specific internal cross references than are necessary and (2) use number or letter tabulations of paragraphs of statute sections when no such designation is necessary.

The Legislative Counsel pointed out that specific internal cross references create two problems. First, the specific reference may be unnecessarily limiting and may exclude other provisions which should be included in the reference. Second, specific cross references create serious problems in amending the bill after introduction. If the bill becomes law, similar problems are created in subsequent amendments to the statute. For example, if a section is deleted from the bill and subsequent sections are renumbered, it is necessary to adjust all specific cross references to make them refer to the renumbered sections. Once the bill has become law, it is necessary (in the case of the basic codes) when an amendment is made to a section to which a reference is made in another section, to amend both sections. Otherwise, the reference to the other section will be deemed to be a reference to that section as it existed at the time the reference was made to it. In other words, the reference would not include the amendment. Mr. Sam Kagel, as a user of the statutes, took the position that internal cross references

Minutes - Regular Meeting
November 18, 1960

are very helpful to the person using the statute. When only one section is intended to be referred to but a general reference is used, the statute user is required to study carefully the entire act in order to determine the section or sections to which reference is intended to be made. On the other hand, if the statute contains a specific cross reference the statute user can turn to that section immediately.

The Legislative Counsel also objected to the practice of giving each paragraph of a statute section a number or letter designation. This is not the present practice in California and he would not like to see the Commission adopt a different form than that now used. Moreover, if a section requires this type of designation, it suggests that the section should be split into a number of shorter sections. It was pointed out that the Uniform Acts follow the practice of giving each paragraph of each section a number or letter designation. This practice provides a convenient method of referring to portions of a statute section.

The Executive Secretary reported that the staff plans to follow the form now used in California for the 1961 legislative program. Paragraphs will not be designated by numbers or letters unless the paragraphs are a tabulation following a colon. Specific internal cross references will be eliminated unless they are considered necessary. The staff will work with the Legislative Counsel in accomplishing these objectives. The Commission approved this procedure for its 1961 legislative program only. It was understood that the questions raised by the Legislative Counsel

Minutes - Regular Meeting
November 18, 1960

would be considered by the Commission in preparing its 1963 Legislative Program and at that time the Commission would consider the two questions presented by the Legislative Counsel and would make a decision as to the form of the legislation in the 1963 Legislative Program.

II. CURRENT STUDIES

A. Study No. 38 - Inter Vivos Rights: The Commission considered a draft of an amendment to Section 13671.5 of the Revenue and Taxation Code.

The staff reported that a letter had been received from Mr. J. D. Lear, Assistant Chief Inheritance Tax Attorney. Mr. Lear did not suggest any change in the approved recommendation. However, he indicated an interpretation of the Commission's recommendation that is not in accord with the general policy of the Commission. Under the approved recommendation, when quasi-community property is converted into joint tenancy property and thereafter one of the spouses dies, the inheritance tax payable by the surviving spouse will depend on the contribution that spouse made to the acquisition of the joint tenancy property. Quasi-community property would, in Mr. Lear's opinion, be considered as the separate property of the spouse who originally acquired the quasi-community property and the surviving spouse would pay an inheritance tax on all or none of the joint tenancy property, depending on whether or not the surviving spouse was the spouse that originally acquired the quasi-community property that was converted into joint tenancy property. The Commission did not intend that the conversion of quasi-community property into joint tenancy property have this effect. Rather, the Commission intended that when quasi-community property is converted into joint tenancy property, each spouse is to be deemed to be the contributor of one-half of the property; and, upon the death of either spouse, the surviving spouse should pay a tax on one-half of the joint tenancy property.

Minutes - Regular Meeting
November 18, 1960

Accordingly, a motion was adopted approving in substance the proposed addition to Section 13671.5 of the Revenue and Taxation Code. The staff was directed to insert the amendment in the recommendation (after making any necessary revisions in the amendment and recommendation). The proposed amendment to Section 13671.5 would add the following new paragraph, to be inserted after the first paragraph of Section 13671.5:

Where husband and wife hold property in joint tenancy, or deposit property in a bank or similar depository in their joint names subject to payment to either or the survivor, and such property had its source in quasi-community property of the marriage of the husband and wife, then upon the death of either of them, such property shall be treated for inheritance tax purposes as if it were quasi-community property of the husband and wife.

13671

B. Study No. 36(L) - Condemnation (Evidence): The Commission considered Memorandum No. 99(1960).

A motion was adopted that Section 1248.4 be revised to read:

1248.4. If the court finds that the opinion of a witness as to the amount to be determined under subdivision 1, 2, 3 or 4 of Section 1248 is inadmissible [~~under Section 1248.2 or Section 1248.3~~] because it is based in whole or in part upon incompetent facts or data, the witness may then give his opinion as to such amount after excluding from consideration the facts or data determined to be incompetent.

A motion was adopted that in Section 1248.2 the words "including but not limited to" (at the end of the introductory clause) be deleted and the substance of the following inserted in lieu thereof: "which may include but are not limited to."

The Commission discussed the reasons why offers, including offers on the subject property, should be inadmissible.

C. Study No. 36(L) - Condemnation (Moving Expenses in Eminent Domain Proceedings): The Commission considered Memorandum 99(1960) and the Recommendation and Proposed Legislation dated October 31, 1960. The following actions were taken:

Section 1270.1. The words ", as part of the payment for the taking of or damage to his property," were inserted between "entitled" and "to" in the third line of Section 1270.1.

Section 1270.2. The words ", as part of the payment for the taking of or damage to his property," were inserted between "entitled" and "to" in the third line of subdivision (b).

Minutes - Regular Meeting
November 18, 1960

The changes in Sections 1270.1 and 1270.2 were made to indicate that the compensation for moving expenses is part of the total "payment" for the property to be taken within the meaning of Section 1, Article XXVI, of the California Constitution which permits vehicle fuel taxes to be used only for highway purposes, including "payment for property" acquired for highway purposes.

Section 1270.1 and Section 1270.3. The word "his" was deleted from the first line of subdivision (a) of Section 1270.1, from the second line of Section 1270.3 and from the second line of the second paragraph of Section 1270.3. The change was made so that the statute would authorize payment for the moving of personal property over which the condemnee has dominion and control even though he does not have title to it.

Section 1270.8. To provide a procedure for the condemner to follow when it elects to move property at its own expense, the following language was added to the end of the sentence in Section 1270.8:

by serving on such person and filing in the proceeding a notice of its election to do so. If the acquirer so elects, such person is not entitled to reimbursement under this title except to the extent that such costs are incurred prior to the receipt of the notice.

Minutes - Regular Meeting
November 18, 1960

D. Study No. 36(L) - Condemnation (Taking Possession and Passage of Title in Eminent Domain Proceedings): The Commission considered Memorandum No. 96(1960) and Memorandum No. 99(1960) and the Recommendation and Proposed Legislation on Taking Possession dated October 31, 1960. The following actions were taken:

Recommendation

Page 3. The word "record" was inserted between "the" and "owners" in the second line of paragraph 2 so that the recommendation will reflect the provisions of the statute more accurately.

Page 4. Paragraph 3 was deleted and, to express more completely the provisions of the statute, the following language was inserted:

3. Delay in effective date of order. Within the 20-day period after notice is given, the owner or an occupant of the property to be taken should be able to apply to the court for an order postponing the date that immediate possession may be taken if he can demonstrate to the court that the hardship to him of having immediate possession taken clearly outweighs the hardship that a delay may cause the public. There is no provision in existing law that permits the court to relieve a condemnee from such hardship. A condemnee should not have the right to appeal from an order denying such a request because the questions involved would become moot by the time the appeal is decided unless the order of

Minutes - Regular Meeting
November 18, 1960

immediate possession were stayed pending the appeal. The order of immediate possession should not be stayed in this situation, for a stay would nullify the right of immediate possession. On the other hand, the condemner should have the right to appeal from an order granting a stay of the order of immediate possession; the right to obtain the possession of the property before the completion of the proceeding would remain valuable to the condemner and, therefore, the question whether the lower court erred in granting the stay should be subject to review.

Page 6. The staff was asked to add language at the end of the first paragraph under Possession Pending Appeal to indicate that possession pending appeal is beneficial to condemnees as well as condemners.

Page 8. The question whether the compensation to be made upon an abandonment should include incidental business losses was deferred until further consideration of the question of compensation for such losses in all condemnation proceedings. The Commission recognized that the existing law is not clear upon the question whether damages for incidental business losses can be recovered upon the abandonment of an eminent domain proceeding. However, the Commission indicated that it did not desire to provide clearly for the recovery of such losses in abandonment situations without considering whether such losses should be compensated generally. The proposed language in Section 1255a is not greatly different from that presently used in the Constitution; hence, the section will probably preserve existing law on the question of recovery for incidental business losses, whatever that law may be.

Minutes - Regular Meeting
November 18, 1960

Page 9. The last sentence of the first paragraph under Interest was revised to read:

"These rules have been established both by cases and statutes but some of them are difficult to find and others have been questioned by some writers."

The revision was made to reflect the fact that a different view of the law on interest has been taken in the Continuing Education of the Bar volume on Condemnation Practice and Procedure.

Page 13. At the end of the recommendation, the following language was added to indicate that immediate possession is sometimes beneficial to condemnees:

"Moreover, expanding the right of immediate possession will often benefit the landowner. Upon commencement of condemnation proceedings, a landowner is deprived of many of the valuable incidents of ownership. He can no longer place improvements upon the property for which he may be compensated. He is practically precluded from selling or renting the property for few persons wish to purchase a law suit. Without immediate possession this condition may continue for long periods of time. But if the condemner takes the property upon the commencement of the proceedings, the condemnee will have a substantial portion of the compensation available immediately and will be able to make his plans for the future promptly."

The staff was directed to add language preceding the sentence beginning "without immediate possession" in the foregoing paragraph to indicate that the hardship to the condemnee is caused by the fact that he

Minutes - Regular Meeting
November 18, 1960

cannot receive the compensation for the property promptly unless immediate possession is taken.

Statute

Section 1243.5.

In subdivision (2)(d), "after" was substituted for "upon" because the date in the order of immediate possession is merely the earliest date that the condemner can take possession if service is accomplished within the proper time.

In subdivision (3), "occupants" was substituted for "person or persons" in the last line on page 15. The words "in possession of the property" were deleted from the last line on page 15. These revisions were made because "occupants" is a more precise word to indicate that the persons physically occupying the property are to be served.

On page 16, the words "upon such person and his attorney of record" were added after the word "mail" in the sixth line.

On page 16, the words "of the plaintiff" were deleted from the next to the last line of subdivision (3) so that the requisite affidavit might be made by anyone with knowledge of the facts.

The following paragraph was added to the end of subdivision (3):

As used in this subdivision, "record owner or owners of the property" means both the person or persons in whose name the legal title to the fee appears by deeds duly recorded in the recorder's office of the county in which the property is

Minutes - Regular Meeting
November 18, 1960

located and the person or persons, if any, in possession of the property under a written and duly recorded lease or agreement of purchase.

To provide a condemner with a method of obtaining immediate possession in emergency situations when there is insufficient time to conduct a search for missing owners, the staff was directed to add a provision to subdivision (3) to authorize the court to relieve the condemner from making personal service for good cause.

Subdivision (4) was revised to read:

At any time after the court has made an order authorizing immediate possession, the court may, upon motion of any party to the eminent domain proceedings, order an increase or a decrease in the amount that the plaintiff is required to deposit pursuant to this section if the court determines that the probable just compensation which will be made for the taking of the property and any damage incident thereto is different from the amount of the probable just compensation theretofore deposited.

The revision was made because the word "alter" in the previous draft was thought to be ambiguous.

Section 1249.1. "At the time" was substituted for "on the date" in the second line of the section. The word "date" was changed to "time" in all places where it appears in the section. These changes were made because the use of the word "date" creates an ambiguity

Minutes - Regular Meeting
November 18, 1960

insofar as improvements made on a particular date are concerned.

Section 1254. Subdivision (4) was revised to read:

At any time after the court has made an order authorizing the plaintiff to take possession pursuant to this section, the court may, upon motion of any party to the eminent domain proceedings, order an increase or decrease in the amount that the plaintiff is required to deposit as a further sum pursuant to subdivision (1) of this section.

Section 1255a. In subdivision (4), the third line on page 29, the word "including" was deleted at the beginning of the line and the word "and" was substituted therefor. The change makes the meaning clear that damages for loss of value are in addition to, not included within, damages for the loss of use of the property.

Section 1255b. Subdivision (2)(b) was revised by adding "or deposited into court after entry of judgment" after "Section 1254". The revision incorporates the rule that a deposit of the amount of a judgment in court stops the running of interest on the judgment.

E. Study No. 32 - Arbitration: The Commission considered Memorandum No. 95 (1960) and the material attached thereto.

The following actions were taken with respect to the revised recommendation and statute proposed by the staff and attached to Memorandum No. 95 (1960):

Section 1285 (page 9): Motions were adopted to:

- (1) Delete the words "requesting such relief."
- (2) Revise the second sentence to read: "The respondent named in the petition may serve and file a response opposing the petition or requesting any relief other than that prayed for in the petition or both."
- (3) Add the following sentence at the end of Section 1285: "If no response is filed the allegations of the petition are deemed to be admitted."

Section 1285.2 (page 9): Motions were adopted to:

- (1) Delete the words "seeking relief."
- (2) Delete "as prescribed in Sections 1285.4 and 1285.8."

Section 1285.4 (pages 9-10): Motions were adopted to:

(1) Delete the introductory clause "When a petition or response requesting that an award be vacated is served and filed in accordance with this title." This clause was thought to be unnecessary.

(2) Make an appropriate adjustment to reflect the inconsistency between Sections 1285.4(d) and 1285.8(b) and to indicate that 1285.8(b) is to prevail over 1285.4(d) in cases where 1285.8(b) is applicable.

Section 1285.6 (page 10): A motion was adopted to delete the words "on any of the grounds stated in Section 1285.4" because the Commission did not believe that this specific reference was necessary.

A motion was made by Mr. Stanton, seconded by Mr. Selvin, to delete the last sentence of Section 1285.6 and insert the substance of the following:

The award on rehearing shall be made within the time provided in the agreement unless the court, for good cause shown, extends the time within which the award on rehearing may be made.

The motion was not adopted.

A motion was adopted to add to the last sentence of Section 1285.6 the following "if the court finds that the purpose of the time limit provided in the agreement will not be frustrated by an extension of the time."

Section 1285.8 (page 11): A motion was adopted to delete the introductory clause "When a petition or response requesting that an award be modified or corrected is served and filed in accordance with this title" as unnecessary.

Section 1286 (page 11): No change.

Section 1286.2 (pages 11-12): The Commission believed that this section is unnecessarily complex.

A motion was made by Mr. Stanton, but failed for lack of a second, to permit a person to show grounds for vacating or correcting an award as

Minutes - Regular Meeting
November 18, 1960

a defense to a petition for confirmation.

A motion was made by Mr. Stanton, but failed for lack of a second, to provide that a person could vacate the award on grounds of fraud or corruption or use fraud or corruption as a defense to a petition to confirm until 90 days after discovery of the fraud or corruption.

A motion was made, but was not adopted, that the court for good cause shown could extend the time for showing grounds for vacating or correcting an award as a defense to a petition for confirmation.

Section 1286.4 (pages 12-13): The second sentence of this section was deleted.

The deletion of subdivision (2) (shown in strike out type on page 13) was approved.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Revenue and Taxation Code

13671.5. Where husband and wife hold property in joint tenancy, or deposit property in a bank or similar depository in their joint names subject to payment to either or the survivor, and such property had its source in community property of the marriage of the husband and wife, then upon the death of either of them, such property shall be treated for inheritance tax purposes as if it were community property of the husband and wife.

Where husband and wife hold property in joint tenancy, or deposit property in a bank or similar depository in their joint names subject to payment to either or the survivor, and such property had its source in quasi-community property of the marriage of the husband and wife, then upon the death of either of them, such property shall be treated for inheritance tax purposes as if it were quasi-community property of the husband and wife.

Where community property was converted by a husband and wife into their joint tenancy property and the tenancy thereafter maintained, such property was, under the Inheritance Tax Law (Revenue and Taxation Code Sections 13301-14901), treated as community property of the parties until August 25, 1952, when the State Controller revoked Rule 673(a), formerly adopted by him under the provisions of that law. The revocation of the rule was made effective with respect to decedents dying after April 26, 1950. It is the intent and purpose of Section 13671.5 to restate the law as it existed and was interpreted under the Inheritance Tax Law prior to the revocation of the rule.