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4/16/65

Memorandum 65-22

Subject: Evidence Code

Senator Cobey has forwarded to the Commission the attached letter. The letter suggests that consideration be given to including in the proposed Evidence Code a special privilege for social workers or at least for social workers engaged in adoption proceedings.

What disposition does the Commission wish to make of this matter? Obviously, it is not possible to include a new privilege in the Evidence Code at the current session. It would be possible, however, to undertake to study this matter with a view to making a recommendation to the 1967 legislative session.

Respectfully submitted,

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Executive Secretary

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April 9, 1965

Senator Cobey
State Senate Building
Sacramento, California

Re: Senate Bill No. 110

Dear Senator Cobey:

I have just had an opportunity to examine your Senate Bill No. 110 to establish an Evidence Code. I am Chief Legal Counsel for the Children's Home Society of California and as a member of the Board of Trustees of the Catholic Welfare Bureau of the Archdiocese of Los Angeles.

Both organizations are social welfare agencies licensed by the State Department of Social Welfare. The Children's Home Society, as you no doubt know, is primarily engaged in the field of adoption. The Catholic Welfare Bureau is a general casework agency which has been licensed to place refugee children from foreign countries.

Over the years we have been presented, on numerous occasions, with the matter of confidentiality of the files of social work agencies and particularly in regard to adoption or child custody proceedings.

Civil Code, Section 226a provides that all Superior Court hearings in adoption proceedings shall be held in private, and the court shall exclude all persons, except the officers of the court, the parties, their witnesses, counsel, and representatives of the agents present to perform their official duties under the laws governing adoptions.

Civil Code, Section 227 reads in part:

"The petition, relinquishment, agreement, order and any power of attorney and deposition must be filed in the office of the County Clerk and shall not be open to inspection by any other than the parties to the action and their attorneys and the State Department of Social Welfare, except upon the authority of the Judge of the Superior Court."

Senator Cobey
Sacramento
California

Sheet #2
April 9, 1965

In discussing this section in the case of Hubbard v. Superior Court 189 Cal. App. 2nd 741, the District Court of Appeal pointed out that the Legislature had expressed a firm state policy that the statutory closure of adoption files is never to be broken save in exceptional circumstances for good cause approaching the necessitous.

The reasoning behind Section 227 applies equally to the adoption files in the hands of a licensed social work agency and also to other communications made to social workers.

We have never felt satisfied that the law properly protected the information contained in social work files or in the minds of social workers.

The purpose of this letter is to inquire whether there has been any consideration given in the proposed Evidence Code to the creation of a properly defined privilege for social workers or or at least for adoption workers. If there has been any discussion on this subject, I would appreciate copies of the notes. If there has been none, I think it is a matter that should be discussed.

Thank you for your attention.

Very truly yours,

FJL/o

FRANK J. KAINE, JR.