

<u>Time</u>	<u>Place</u>
May 5 - 7:00 p.m. - 10:00 p.m.	State Bar Building
May 6 - 9:00 a.m. - 5:00 p.m.	1230 W. Third Street
May 7 - 9:00 a.m. - 4:30 p.m.	Los Angeles

TENTATIVE AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

May 5, 6, and 7, 1966

May 5

1. Approval of Minutes of April 1966 Meeting (enclosed)
2. Administrative Matters
3. Study 44 - The Fictitious Name Statute
  - Memorandum 66-18 (to be sent)
  - Revised Tentative Recommendation (attached to memorandum)
  - Revised Research Study (to be sent)
4. Study 67 - Suit in Common Name (formerly part of Study 44)
  - Memorandum 66-17 (sent for April meeting)
  - First Supplement to Memorandum 66-17 (to be sent)
  - Revised Research Study (you have this)

May 6

5. Study 36(L) - Condemnation Law and Procedure
  - The Right to Possession Prior to Final Judgment
    - Memorandum 66-19 (to be sent)
    - Tentative Recommendation (attached to memorandum)
    - Revised Research Study (to be sent)
6. Study 50 - Rights and Duties Upon Abandonment of Lease
  - First Supplement to Memorandum 66-15 (enclosed)
  - Memorandum 66-15 (sent for April meeting)
  - Revised Tentative Recommendation (attached to Memorandum 66-15)
  - Memorandum 66-7 (sent for February meeting)
  - Original Tentative Recommendation (attached to Memorandum 66-7)
  - Revised Research Study (to be sent)

May 7

Continuation of consideration of topics listed for May 5 and May 6

7. Study 42 - Good Faith Improvers

Memorandum 66-16 (sent for April meeting)  
Revised Tentative Recommendation (attached to memorandum)  
First Supplement to Memorandum 66-16 (sent for April meeting)  
Alternative statutory provisions (attached to supplement)

8. Study 63(L) - Evidence Code

Memorandum 66-21 (to be sent)  
First Supplement to Memorandum 66-21 (to be sent)  
Second Supplement to Memorandum 66-21 (to be sent)

9. Study 26 - Escheat of Personal Property

Memorandum 66-20 (to be sent)

MINUTES OF MEETING

of

MAY 5, 6, AND 7, 1966

Los Angeles

A regular meeting of the California Law Revision Commission was held at Los Angeles on May 5, 6, and 7, 1966.

Present: Richard H. Keatinge, Chairman  
James R. Edwards  
John R. McDonough  
Herman F. Selvin  
Thomas E. Stanton

Absent: Hon. James A. Cobey  
Hon. Alfred H. Song  
Joseph A. Ball  
Sho Sato, Vice Chairman  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Joseph B. Harvey, John L. Reeve, and Clarence B. Taylor (May 6 and 7) of the Commission's staff also were present.

Present on May 6 were the following observers:

Richard Allen, Department of Water Resources  
Robert F. Carlson, Department of Public Works  
Thomas H. Clayton, Departments of General Services and Finance  
John M. Morrison, Office of the Attorney General  
David B. Walker, Office of County Counsel, San Diego

Also present on May 6 was John McLaurin, of the law firm of Hill, Farrer, and Burrill, the Commission's consultant on Eminent Domain.

ADMINISTRATIVE MATTERS

Minutes of April 1966 Meeting. The Minutes of April 1966 Meeting were approved as submitted.

Additional Meeting in May. In order to maintain its schedule on its 1967 legislative program, the Commission determined to hold an additional meeting in San Francisco on May 27 (evening) and 28.

Future Meetings. Future meetings are scheduled as follows:

May 27 (evening) and 28	San Francisco
June 9 (evening), 10, and 11	San Francisco
July 21, 22, and 23 (three full days)	Long Beach
August 12 and 13 (two full days)	Los Angeles
September 16 (evening) and 17	San Francisco
October 20, 21, and 22 (three full days)	Los Angeles
November 17 (evening), 18, and 19 (morning)	Berkeley
December--not yet scheduled	

Minutes - Regular Meeting  
May 5, '66, and 7, 1966

STUDY 36(L) - CONDEMNATION LAW AND PROCEDURE

The Right to Possession Prior to Final Judgment

The Commission considered Memorandum 66-19 and the attached draft of proposed legislation and two proposed constitutional amendments. The following actions were taken:

Constitutional amendment

The Commission approved the proposed constitutional amendment (green pages) after revising it to read as follows:

---

SEC. 14. (a) Except as provided in subdivisions (b), (c), and (d) of this section:

(1) Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner.

(2) Subject to the provisions of Section 23a of Article XII, just compensation shall be assessed in a court of record as in other civil cases and, unless a jury is waived, shall be determined by a jury.  
~~, -and-no-right-of-way-or-lands-to-be-used for-reservoir-purposes shall-be appropriated-to-the-use-of-any-corporation,-except a-municipal-corporation-or-a-county-or-the-State-or-metropolitan-water-district,-municipal-utility-district,-municipal-water-district,-drainage,-irrigation,-levee, reclamation-or-water-conservation-district,-or-similar-public corporation-until full-compensation therefor-be first-made-in money or-ascertained-and paid-into-court-for-the-owner, irrespective-of-any benefits-from-any-improvement-proposed-by-such-corporation,-which~~

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

~~compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law; provided, that in any proceeding in eminent domain brought by the State, or a county, or a municipal corporation, or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation, the aforesaid State or municipality or county or public corporation or district aforesaid may take immediate possession and use of any right of way or lands to be used for reservoir purposes, required for a public use whether the fee thereof or an easement therefor be sought upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction and thereupon giving such security in the way of money deposited as the court in which such proceedings are pending may direct, and in such amounts as the court may determine to be reasonably adequate to secure to the owner of the property sought to be taken immediate payment of just compensation for such taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law. The court may, upon motion of any party to said eminent domain proceedings, after such notice to the other parties as the court may prescribe, alter the amount of such security so required in such proceedings.~~

(b) In any proceeding in eminent domain brought by the state or a county, city, district, or other public entity to acquire any right of way or any lands to be used for reservoir purposes, whether a fee or other interest be sought, the plaintiff may take possession and use of the property or property interest following commencement of the proceeding and prior to the final judgment. Before possession or use is taken, the plaintiff shall deposit probable just compensation in accordance with subdivision (d) of this section.

(c) With respect to proceedings in eminent domain not covered in subdivision (b) of this section, the Legislature may specify and classify the entities or persons by which, the public purposes for which, and the manner in and time at which, possession or use of the property may be taken following commencement of the proceeding and prior to final judgment. Before possession or use is taken, the plaintiff shall deposit probable just compensation in accordance with subdivision (d) of this section.

(d) Before possession or use of property is taken, just compensation shall be made to the owner or the plaintiff shall deposit such amount of money as the court determines to be the probable just compensation to be made for the property and any damage incident to the taking. The money so deposited shall be available immediately to the person or persons the court determines to be entitled thereto and may be withdrawn in accordance with such procedure and upon such security as the Legislature may prescribe.

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

~~The taking of private property for a railroad run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier.~~

---

The Department of Public Works suggested that the clause "subject to the provisions of Section 23a of Article XII" be deleted from paragraph (2) of subdivision (a) of the proposed amendment as set out above. This suggestion was not adopted because the Commission considered the clause necessary to make it clear that the proposed amendment did not impliedly repeal the provisions of Section 23a of Article XII.

The Commission considered Exhibit I attached to Memorandum 66-19, but determined not to recommend a constitutional amendment to merely clean up Section 14 of Article I without making any substantive changes.

#### THE PROPOSED LEGISLATION

##### In general

The Commission considered Memorandum 66-19 and reviewed in detail the draft of legislation to add Chapters 1, 2, and 3 of a new Title 7.1 to Division 3 of the Code of Civil Procedure. The changes, additions, and omissions directed by the Commission are set forth opposite the section in the following outline:

##### Section 1268.01 (new)

The Commission approved Section 1268.01 which deals with the deposit of probable just compensation prior to judgment. The words, "or, if requested

by the plaintiff, for each separate interest in the property" were deleted to avoid any reference to the plaintiffs making of separate deposits for each particular interest in the property taken. Similarly, the words "amount or amounts" were changed to read simply "amount" throughout the chapter.

The Commission considered the problems inherent in the use throughout these chapters of the words "the property" and "parties to the proceedings". It was noted that Code of Civil Procedure Section 1244 makes liberal provision for including in a single proceeding in eminent domain any number of parcels of land to be devoted to the same public use, and that the plaintiff generally determines both the parcels to be included in the one proceeding and the parcels of which immediate possession is to be requested. It was also noted that, under existing law, the plaintiff may take immediate possession of only so much property as is needed for the specific purposes of "rights of way" or "lands to be used for reservoir purposes." In view of the broad provisions for possession prior to judgment, problems may arise as to the portion of property of which immediate possession may or must be taken. The staff was directed to clarify the section, and related sections, to assure that "the property" means a parcel of property within a single ownership irrespective of the number of parcels joined in the particular proceeding. The clarification is also to achieve the effect that the "parcel" for which a deposit is to be made is the same portion of property to be eventually valued as a unit in the eminent domain proceeding.

Section 1268.02 (new)

This section was approved with minor changes made in the interest of clarify.

Section 1268.03 (new)

This section, requiring notice of a deposit to "the other parties to the proceeding" was approved after addition of the words "who have an interest in the property for which the deposit is made."

Section 1268.04 (new)

This section was approved as drafted.

Section 1268.05 (new)

This section, dealing with the withdrawal of deposits, was approved as revised in the interest of clarity and precision. The section is to be revised to assure a discretion to the court to permit withdrawal of only the amount to which the applicant is entitled, even though other parties are served and fail to object. The section is also to be changed to permit the court to require an undertaking as to an amount withdrawn even though another party may not specifically claim that portion. The section is also to be clarified to assure that an adverse claimant, by failing to object to a withdrawal, waives only his right to withdraw the same portion--and his rights against the plaintiff, rather than finally as against the withdrawing party.

See also the action taken under Section 1268.06.

Section 1268.06 (new)

This section was approved as revised in the interest of clarity. The Commission directed that the substance of subdivision (d) of this section, permitting the recovery of bond premiums as costs in the proceeding, be also added to Section 1268.05, with an appropriate exclusion for situations in which the controversy between adverse claimants is a matter of title rather than allocation of the award.

Section 1268.07 (new)

This section was approved with minor grammatical changes.

Section 1268.08 (new)

This section was approved with minor grammatical changes.

Section 1268.09 (new)

This section was approved as drafted.

Section 1268.10 (new)

This section was approved as drafted.

Section 1269.01 (new)

This section, restating the constitutional right to immediate possession in certain cases, was approved as drafted. The exact language of the section is to conform to the approved version of the proposed constitutional amendment. Subdivision (c)(5) will be changed in effect because of changes made to Section 1269.04 increasing the period of notice to the owner from 20 to 30 days.

Section 1269.02 (new)

This section which states the statutory right to immediate possession in cases where the plaintiff's determination of necessity is conclusive, was changed by deletion of subdivision (e). The comments to the section are to indicate that existing writ practice with respect to orders for possession is to be continued. Subdivision (d) was changed to require that any motion to modify the order for possession be made within 10 days after service of the order upon the property owner.

Paragraph (1) of subdivision (d) was changed to require that the hardship to the property-owner be shown "clearly" to outweigh any need of the plaintiff for immediate possession.

Section 1269.03 (new)

This section was changed by deleting subdivision (f), which provided

an appeal from the granting or denial of an order for possession. The section was also changed by deletion of subdivision (c) which detailed the contents of the motion.

Section 1269.04 (new)

This section was approved with minor grammatical changes made in the interest of clarity. The comment to the section is to indicate that subdivision (f), dealing with service upon persons at the same address, means service upon each residential unit, rather than all residential or business units having the same street address.

Section 1269.05 (new)

This proposed section, which would have required 90 days written notice by the condemnor to occupants of homes, farms, and business locations before any move is required, was deleted. In lieu of such section, the period of notice under all orders for possession prior to judgment was increased from 20 to 30 days.

Section 1269.06 (new)

This section, dealing with deposit and possession on motion of the defendant, is to be revised to limit application to cases in which the property being taken is a residential building with not more than four living units and the defendant moving for the deposit is a resident of one of the units. Because of this substantial change in the section, the Commission directed that an appropriate provision be added to Chapter 1 (commencing with Section 1268.01) to provide that where a deposit is made under that chapter, and if any portion of the deposit is withdrawn by the defendant, the condemnor thereby acquires the right to possession and use of such defendant's interest in the property.

In subdivision (a), the word "move" was substituted for "file, notice and serve a motion."

In subdivision (b), in the first sentence the words "30 days after the date" were inserted for the words "20 days after the date of the order if, before the expiration of the 20-day period,". In the second sentence, the words "20 days after the date of the order" were inserted for "the 20-day period".

A provision should be added to Section 1269.06 that interest not be recoverable for any period of delay in the trial of the case cause by the defendant.

As thus revised, Section 1269.06 was approved.

Sections 1270.01 to 1270.08 generally

The staff was directed to determine whether Chapter 3 could be drafted similar to Chapter 1. Specifically, should the deposit after judgment is entered by "probable just compensation"? Can the withdrawal provisions of Chapter 1 be adapted for use in Chapter 3?

Section 1270.01 (new)

This section stating the requirements for taking possession by the condemnor after judgment was clarified to make it clearly apply to all instances of taking possession "after the entry of judgment," as opposed to the taking of so called "immediate possession" under Chapter 2.

Section 1270.02 (new)

This section was approved as drafted.

Section 1270.03 (new)

This section was approved as drafted.

Section 1270.04 (new)

This section, dealing with the motion to increase or decrease the deposit made to obtain possession after entry of judgment, is to be clarified to assure that it pertains only to the amount, in addition to the amount of the judgment, that is deposited to secure payment of any further damages and costs that may be recovered in the proceeding. The section also is to provide that this further sum is deposited as security and is not subject to withdrawal.

Section 1270.05 (new)

This chapter is to be revised to make applicable to withdrawal of deposits made after entry of judgment such parts of the comparable provisions dealing with deposits made before judgment as may be appropriate. Consideration should be given to adding a provision to deal with the eventuality of adverse claims between defendants to the amount deposited and to permit the court to require an undertaking for withdrawals in appropriate cases.

Section 1270.06 (new)

This section was approved as drafted.

Section 1270.07 (new)

This section was approved as drafted.

Section 1270.08 (new)

This section was approved as drafted.

Section 1249 (amended)

The substance of this section was approved as drafted after "in any case in which there is a new trial," was substituted for "in any case in which a new trial is granted as a result of a motion therefor, an appeal, or for any other reason."

The Department of Public Works objected to subdivision (g), but the subdivision was approved in substance as contained in the staff's draft.

The provisions of this section relating to date of valuation are to be split out into a separate section.

Consideration should be given to defining date of valuation in what would remain of Section 1249 when the date of valuation provisions are placed in a separate section.

The comment to Section 1249 should indicate that a mistrial is under subdivisions (e) and (f) and that a new trial as a result of a motion therefor or as a result of a reversal of the original judgment on appeal is under subdivision (g).

The staff is to check with the Legislative Counsel to determine whether six months is a proper method of computing time under Section 1249 as revised.

Section 1249.1 (amended)

The relationship of this section to proposed Section 1269.06 should be considered by the staff in redrafting this section. Possibly an additional subdivision is needed in view of Section 1269.06. The Commission declined to attempt to clarify the meaning of the phrase "improvements pertaining to the realty that are on the property" because

this matter will be the subject of a separate study.

Subdivision (d) should be revised to provide that any time after the condemnor has made a deposit of probable just compensation, whether or not any portion of the deposit is withdrawn, the condemnee may vacate the property and notify the condemnor that he has done so. The condemnor then has the right to take possession and, whether or not the condemnor takes possession, the risk of loss then shifts to the condemnor.

Section 1253 (amended)

This section was approved as drafted.

Section 1255a (amended)

This section was approved as drafted.

Section 1255(b) (amended)

This section was approved as drafted except that the approval of subdivision (a)(4) was subject to any action taken on Section 1269.06.

Section 1257 (amended)

This section was approved as drafted.

Government Code Section 16425 (added)

This section was approved after the words "to the plaintiff in the eminent domain proceeding" were deleted in the last sentence.

Government Code Sections 38090 and 38091 (amended)

These sections were approved as drafted. (Note that the reference to Section 1249 may require a change if the date of valuation section number is changed.)

Streets and Highways Code Sections 4203 and 4204 (amended)

These sections were approved as drafted.

Repeal of Sections 1243.4, 1243.5, 1243.6, 1243.7, and 1254

The repeal of these sections was approved.

Section 18 (operative date)

This section was approved.

STUDY 42 - GOOD FAITH IMPROVER

The Commission considered the draft of the tentative recommendation on this subject dated May 2, 1966. The following actions were taken:

Section 871.1

Subdivision (a) was revised to read in substance:

(a) As used in this chapter, "good faith improver" means a person who, acting in good faith and erroneously believing because of a mistake either of law or fact that he is the owner of the land or is entitled to possession of the land for not less than 15 years, affixes an improvement to land owned by another person.

In subdivision (b), the phrase "the United States," was deleted.

Section 871.2

This section was approved as drafted. (Note, however, that the word "lease" should be changed to "right to possession" to conform to the change made in Section 871.1.)

Section 871.3

This section was approved as drafted.

Section 871.4

This section was approved as drafted.

Section 871.5

This section was approved after the first sentence was revised to read: "Subject to Section 871.4, the court may effect such an adjustment of the rights, equities, interests of the good faith improver, the owner of the land, and the other parties as is consistent with substantial justice to the parties under the circumstances of the case."

Additional provision

The substance of the following provision is to be added to the proposed

legislation:

This chapter does not affect any legal or equitable defenses, such as adverse possession, estoppel, or laches, that may be available to a good faith improver.

Section 871.6

Subdivisions (b) and (e) are to be revised to provide that the owner may offer to transfer to the improver or the improver may elect to purchase "the improvement and the land reasonably necessary to the convenient use of the improvement." This text is taken from the case law on mechanics liens.

The meaning of the phrase "good faith improver and his predecessors in interest" should be explained in the comment to this section.

Section 741 (amendment).

The word "permanent" is to be deleted.

Section 3

This section was approved as drafted.

Approval for distribution for comments

After the tentative recommendation has been revised to reflect the actions taken at the May meeting, the tentative recommendation is to be distributed for comment to all interested persons and organizations.

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

STUDY 44 - FICTITIOUS NAME STATUTE

The Commission considered Memorandum 66-18 and the Revised Tentative Recommendation relating to the Fictitious Name Statute. The following actions were taken:

Civil Code Sections 2466-2471

The repeal of these sections was approved.

Proposed legislation to be compiled in Business and Professions Code

The proposed legislation is to be a new Chapter 5 added to Part 3 of Division 7 of the Business and Professions Code.

Section 17900

Section 17900 was revised to read:

As used in this chapter, "fictitious name" means:

(a) In the case of an individual, a name does not include the surname of the individual.

(b) In the case of a partnership, a name which does not include the surnames of all the members of the partnership.

(c) In the case of a corporation, a name other than its corporate name as set out in its articles of incorporation.

Section 17901

Section 17901 was approved as drafted.

An alternative which would have included "unincorporated association" within the definition of "person" was rejected since it would impose an unreasonable burden on many nonprofit unincorporated associations.

The comment to the section is to be revised to read:

This definition is added to eliminate needless repetition in the remainder of the statute.

Section 17902

Section 17902 was revised to read:

17902. (a) Every person who regularly transacts business in this state under a fictitious name shall, within 40 days from the time he commences to transact business in this state, file a fictitious name certificate in accordance with this chapter.

(b) A partnership shall file a new fictitious name certificate in accordance with this chapter within 40 days after any change in its membership.

(c) A corporation shall file a new fictitious name certificate in accordance with this chapter within 40 days after any change in its corporate name as set out in its articles of incorporation.

(d) A person who has filed a fictitious name certificate shall file a new fictitious name certificate in accordance with this chapter before continuing to transact business in this state under a fictitious name after the expiration of the earlier certificate.

(e) A person shall file a new fictitious name certificate in accordance with this chapter within 40 days after any change in the address of his principal place of business in this state.

The amendment to Section 17902(a) was adopted to make it clear that the statute does not apply to a person who engages only in isolated transactions in California. The comment is to be amended to reflect this policy decision.

The statute also was amended to provide a 40 day period in which to file a fictitious name certificate. This requirement was taken from Corporations Code Section 15700 governing the designation of an agent to accept service of process on behalf of a foreign partnership.

#### Section 17903

This section was approved as drafted.

#### Section 17904

Section 17904(b) was revised to read:

The complete address of the person's principal place of business in this state, if any.

Section 17904(c) was revised to read:

In the case of an individual registrant, the full name and complete residence address of the individual.

Section 17904(d) was revised to read:

In the case of a partnership registrant, the full names and complete residence addresses of all the members of the partnership.

Section 17904(e) was revised to read:

In the case of a corporate registrant, the name of the corporation as set out in its articles of incorporation.

Section 17904(g) was deleted as unnecessary, as was the provision in 17904(c) that would have required a corporation to list certain of its officers in its fictitious name certificate.

#### Section 17905

Section 17905 was revised to require that only two or more of the partners sign the fictitious name certificate on behalf of the partnership. The requirement of acknowledgement was approved and the Commission also added a requirement that the certificate be verified. The clause "Notwithstanding the provisions of Section 1195 of the Civil Code" was deleted.

#### Section 17906

Section 17906 was revised to read:

A fictitious name certificate expires ten years from January 1 of the year following the date it was filed in the office of the Secretary of State.

#### Section 17907

The words "operate to" were deleted from the second sentence of the section. The section was approved as revised.

#### Section 17908

Section 17908(a) was revised to read:

A person who has filed a fictitious name certificate may, upon ceasing to use that fictitious name, file a certificate of abandonment of use of a fictitious name. The certificate shall be filed with the officers with whom the fictitious name certificate was filed.

Subdivision (b)(5) and the first clause in Section 17908(c) were deleted as unnecessary.

Sections 17909 and 17910.

These sections were approved as drafted.

Section 17911

The section was revised to provide that a certified copy of a fictitious name certificate is to be prima facie evidence only of the information that is required to be in the certificate. This will prevent persons from padding their certificates to obtain the evidentiary advantages of the section.

Section 17912

The civil penalty provided in the tentative recommendation was deleted. It is to be replaced by a criminal sanction: failure to comply with all of the requirements of the chapter will be a misdemeanor punishable by a fine not to exceed \$300. The fine is to be levied on the individual, partnership, or corporation that is required to file the fictitious name certificate and not on the individual members of the firm. The Commission concluded that an automatic sanction was needed to obtain compliance with the chapter. Mr. Selvin and Mr. Edwards voted against the adoption of a criminal penalty.

The staff was instructed to amend the section and the comment thereto to make it clear that a violation of the chapter will neither invalidate a transaction made in a fictitious name nor make it unenforceable. In addition, it should be made clear that a fictitious name certificate will be valid even though it is filed after the time in which it is required to be filed.

Business and Professions Code Sections 10159.5 and 10522.5

These sections were approved as drafted in the tentative recommendation.

Financial Code Section 12300.2

This section was approved as drafted in the tentative recommendation.

Government Code Sections 26848 and 12193.5

These sections were approved as drafted.

Operative Date

An operative date of January 1, 1968, was approved for the act. Persons are to be permitted to file a certificate before the operative date and such certificate will be deemed to have been filed on the operative date of the act. The Commission did not approve Section 9 of the draft.

STUDY 67 - SUIT IN COMMON NAME

The Commission considered Memorandum 66-22 and the draft statute distributed therewith. The following actions were taken:

Section 388 of the Code of Civil Procedure

The repeal of the existing Section 388 was approved and a proposed substitute was then considered.

Subdivisions (a) and (b) were approved. The staff was directed to revise subdivision (c) to provide that an individual is not liable personally upon a judgment against an unincorporated association unless the individual was named as a party and personally served in his individual capacity. A judgment against an unincorporated association creates no lien on an individual's property and execution on the judgment can be levied only upon the property of the association.

Consideration of subdivision (d) was deferred.

Section 395.2

Section 395.2 was approved.

The comment should identify the constitutional provision governing suits against corporations.

Section 410

Section 410 was approved.

Section 411

Subdivision 2.1 should be revised to express, in principle, the idea that an association may be served by personal service on the president or other head of the association, a vice president, a secretary, an assistant secretary, general manager, or general partner or upon a designated agent for service. If none of the foregoing persons (not including the service agent) can be found with due diligence and if the service

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

agent cannot be found at the designated address, then service upon any member together with mailing to the last known address of the principal office or place of business is sufficient.

Subdivision 2.1 is also to be revised to indicate that the public agencies identified in subdivision 5 are not included among the associations covered by 2.1.

Section 411 was then approved.

Corporations Code Section 22500

§ Section 22500 is to be revised to eliminate public entities and public agencies from the definition of "unincorporated association."

Section 22501

Section 22501 was revised to read in substance as follows:

22501. Except as otherwise provided by statute, an unincorporated association is liable for its act or omission, and for the act or omission of its officer, agent, or employee acting with the scope of his office, agency, or employment, to the same extent as if the association were a natural person. Nothing in this section affects the liability between members of an association or the liability between an association and the members thereof.

A provision is to be added to the statute to provide that nothing in the sections relating to the liability of unincorporated associations affects the status of such associations under any law relating to taxation.

Section 22502 was deleted.

Section 22503

The requirement that a service agent be a natural person was deleted

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

from subdivision (a). The last sentence of subdivision (a) was revised to authorize a refiling of the service agent designation at any time. The substance of the revised sentence is to be made applicable to the certificate mentioned in subdivision (b).

Subdivision (c) is to be redrafted to permit the filing of a single document.

Sections 22500-22503 were then approved in principle.

Sections 21100-21101 and 21200.5

The staff is to check with representatives of title companies to determine how they are operating under Section 21200.5 in regard to signatories to deeds and to determine whether the provisions of that section can be extended to all unincorporated associations.

The staff is also to consider whether a general provision granting the powers of a natural person to an unincorporated nonprofit association would be desirable.

Tax aspects of granting powers to such associations and limiting the liability of the members should also be investigated.

The staff was then directed to prepare a letter raising the above problems and, in addition, the problem of the extent to which the liability of members of unincorporated associations should be limited-- particularly where a commercial activity is involved. This letter should be accompanied by Sections 1-6 of the proposed statute, indicating that those sections have been tentatively approved in principle, and also Sections 7-9, indicating that those sections have not been acted upon. This letter should be directed to various law professors who are knowledgeable in the fields of taxation and corporations to solicit their

Minutes - Regular Meeting  
May 5, 6, and 7, 1966

views on these problems. The letter should be submitted to the Commission in draft form for approval at its next meeting.

On the drafting of Sections 21100 and 21101, the staff is to consider shortening Section 21100 and deleting "negligent or wrongful" from Section 21101.

REPORT ON STATUS OF 1967 LEGISLATIVE PROGRAM

1. Study 36(L) - Condemnation Law and Procedure (Possession Prior to Final Judgment)

Status: We are working on draft statute and constitutional amendment.

Recommendation: Not yet drafted

Research Study: Staff research study will need substantial revisions and substantial additions. Study will be printed in Stanford Law Review. We will have page proofs by October to use in our pamphlet.

2. Study 65(L) - Inverse Condemnation

Status: Not yet considered by Commission. Professor Van Alstyne is our consultant on this project. Our contract with him calls for first portion of the research study to be in our hands on September 1.

3. Study 63(L) - Evidence Code

General Recommendation

Status: We have distributed a tentative recommendation for comment and comments are due July 1. We will be considering additional matters in connection with provisions of the Evidence Code at the May meeting. We will not publish a research study in connection with this recommendation.

Revisions of the Commercial Code

Status: Statute sections will be considered at May meeting. No research study will be published.

Revisions of the Agricultural Code

Status: Work in progress. We have sent material to the State Department of Agriculture for their comments prior to submitting it to the Commission for consideration. No research study will be published.

Revisions of the Business and Professions Code

Status: The staff has not yet commenced work on this code. We are now attempting to discover all pertinent sections. No research study will be published.

4. Study 50 - Rights Upon Abandonment or Termination of Lease

Status: We have distributed a tentative recommendation for comments and will consider the comments at our May meeting.

Recommendation: Will consider revised tentative recommendation at May meeting.

Research Study: The staff has prepared an entirely new research study which we have submitted to the Stanford Law Review for consideration. If the review accepts the study for publication, we will have page proofs in October to use in our pamphlet.

5. Study 55 - Additur

Status: We distributed a tentative recommendation for comment and comments are due July 1.

Recommendation: We will consider comments on tentative recommendation at our July meeting.

Research Study: We plan to write an entirely new research study on this topic. We have assigned the research study to a law review man and hope to have the new study available in July. We do not presently plan to have this study printed in a law review.

6. Study 62 - Vehicle Code Section 17150 and Related Statutes

Status: We distributed a tentative recommendation for comment and comments are due July 1.

Recommendation: We will consider comments on tentative recommendation at our July meeting.

Research Study: Research Study printed in Stanford Law Review and we plan to reprint it in our pamphlet.

7. Study 53(L) - Personal Injury Damages

Status: We distributed a tentative recommendation for comment and comments are due July 1.

Recommendation: We will consider comments on tentative recommendation at our July meeting.

Research Study: Research Study will be printed in next issue of U.C.L.A. Law Review and we plan to reprint it in our pamphlet.

8. Study 44 - Fictitious Name Statute

Status: Will consider tentative recommendation at our May meeting and will, we hope, distribute the tentative recommendation for comments after May meeting.

Recommendation: Working on drafting tentative recommendation.

Research Study: We plan to write a new research study. Time will not permit us to submit it for publication in a law review.

9. Study 67 - Suit in Common Name

Status: Will consider draft statute at our May meeting.

Recommendation: None drafted as yet. Hope to approve for distribution for comments at our June meeting.

Research Study: We will write new study after tentative recommendation has been prepared and distributed for comment. Time will not permit us to submit it for publication in a law review.

10. Study 26 - Escheat

Status: Staff is preparing material (possibly a tentative recommendation) for consideration by Commission at the June meeting. We have already sent material to State Controller and Attorney General for comment. This is a topic that should be included in our 1967 legislative program.

11. Study 42 - Good Faith Improver

Status: Will consider tentative recommendation at May meeting.

Recommendation: Tentative recommendation drafted for Commission consideration.

Research Study: Research Study printed in Stanford Law Review and we plan to reprint it in our pamphlet.

12. 1967 Annual Report

Status: Will approve for printing at November meeting.

**IMPORTANT DEADLINES**

Sent proposed legislation to printer to print as preprinted bills--not later than August 19 (following July and August meetings). We will have an interim hearing on our 1967 program by Senate Fact Finding Committee on Judiciary in September and should have all of our proposed legislation (to extent possible) in form of preprinted bills for that hearing.

Final approval of recommendations for printing--not later than November (following October and November meetings)(except for inverse condemnation which we will probably approve for printing in December).