

5/25/67

Memorandum 67-35

Subject: 1967 Legislative Program

The attached gold sheet is a progress report on our 1967 legislative program. The following matters require Commission attention at this time.

Senate Bill No. 247 (General Evidence Revision)

This bill was approved by the Assembly Judiciary Committee but was referred back to the Committee because of objections to Section 646 which deals with res ipsa loquitur.

The objection is that the section does not spell out that the inference remains after the presumption disappears. Assemblyman Bear and I have prepared a revision of Section 646 which is attached as Exhibit I. I see no objections to substituting this for Section 646 in the bill, but I would like the Commission to review the provision before the bill is amended. A substantial number of other persons are reviewing this draft.

Senate Bill No. 249 (Commercial Code Revision)

By the time of the meeting, I assume that this bill will have passed the Senate. The amendments that were made in the Senate did not include one subdivision that was approved by the Commission at the last meeting. We proposed to add a subdivision to Section 1202 stating that the provisions of that section were subject to variance by agreement of the parties. No such provision is needed and, if one were included, I am sure that the Permanent Drafting Committee would object to the revision. Commercial Code Section 1102 provides in part: "The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and

care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable." The Permanent Drafting Committee has objected to revisions of the Uniform Code made by some states that add "unless otherwise agreed" to particular sections of the code. We should have a draft of the bill as it passed the Senate in time for our meeting.

Senate Bill No. 251 (Unincorporated Associations)

I have agreed to make the amendments set out in Exhibit II to this bill. The amendments make no change in substance, but I would like the Commission to review the amendments before they are made. Attached is a copy of the latest version of the bill.

Senate Bill No. 254 (Good Faith Improvers)

We have reset this bill for hearing on June 12. We do not plan to make any amendments prior to the hearing. One problem with the bill is the provision that makes a person who believes that he has a long term lease a good faith improver. This has caused some confusion, but I doubt that the elimination of this provision would improve the chances for passage.

Respectfully submitted,

John H. DeMouly
Executive Secretary

PROGRESS REPORT ON 1967 LEGISLATIVE PROGRAM

May 22, 1967

All bills have passed Senate except SB 249 which has been approved by Senate Judiciary Committee and will be voted on this week in the Senate. (The Commission killed SB 531 and an amendment to SB 251 takes care of the problem that caused us to draft SB 531.)

Signed by Governor

SB 250 (additur)

Passed by Assembly

SCR 13 (continues our authority to study topics)

SB 248 (Agricultural Code Revisions)

To be Heard by Assembly Judiciary Committee

SB 244 (Vehicle Code Revisions) -- June 12 hearing

SB 245 (Personal injury damages) -- June 12 hearing

SB 246 (Personal injury damages) -- June 12 hearing

SB 247 (General Evidence Recommendation) -- Set for hearing on June 12. (This bill was reported "do pass" by Assembly Judiciary Committee. It advanced to third reading in Assembly. Various Assemblymen objected that the res ipsa loquitur section did not clearly provide that the inference remained after the presumption disappeared. The bill has been referred back to the Senate Judiciary Committee. We are hopeful that the problem can be resolved by writing some of the material in the comment into the statute. We will consider a proposed amendment at our June 2-3 meeting. It appears, however, that various members of the Assembly who are interested in the bill will have their own amendment.)

SB 249 (Commercial Code Revisions) -- Approved by Senate Judiciary Committee; passage by Senate expected this week. Not yet set for hearing in Assembly.

SB 251 (Unincorporated associations) -- Set for hearing on June 12. We have agreed to make a clarifying amendment in the Assembly to satisfy the Labor Unions. The substance of the amendment has been agreed upon. We will have it available for consideration at the meeting on June 2-3.

SB 252 (Leases) -- Approved by Assembly Judiciary Committee; now on the inactive file. We will consider what should be done with this bill at our June 2-3 meeting.

SB 253 (exchange of valuation data) -- We will work on this bill at our June 2-3 meeting. Not yet set for hearing.

SB 254 (good faith improver) -- Set for hearing on June 12. (Approved by Assembly Judiciary Committee, passed Assembly, passage reconsidered, bill referred back to Assembly Judiciary Committee.)

(a) The judicial doctrine of res ipsa loquitur is a presumption affecting the burden of producing evidence. Unless the defendant has produced such conclusive evidence that the inference of negligence is dispelled as a matter of law, the facts giving rise to the doctrine of res ipsa loquitur will support an inference of negligence even after its presumptive effect has disappeared.

(b) If the defendant against whom the res ipsa loquitur presumption operates introduces evidence which would support a finding that he was not negligent, the court may, and upon request shall, instruct the jury that the facts that give rise to the doctrine of res ipsa loquitur are themselves evidence of the defendant's negligence from which the jury may infer that the defendant failed to exercise due care and that if such facts are found or established the jury may infer that negligence on the part of the defendant was a proximate cause of the accident. The instruction should make it clear, however, that the jury should draw the inference and find for the plaintiff only if, after weighing the circumstantial evidence of negligence together with all of the other evidence in the case, it believes that it is more likely than not that the accident was caused by the defendant's negligence.

EXHIBIT II

AMENDMENTS TO SENATE BILL NO. 251 AS AMENDED IN SENATE

ON MAY 2, 1967

AMENDMENT NO. 1

On page 4 of the printed bill as amended in Senate on May 2, 1967, line 5, after "Code):" insert:
whether or not the unincorporated association has designated an agent for service of process as provided in Section 24003 of the Corporations Code,

AMENDMENT NO. 2

On page 4, line 12, after "person" insert:
, if any,

AMENDMENT NO. 3

On page 6, line 4, after "24001." insert:
(a)

AMENDMENT NO. 4

On page 6, line 5, strike out "for its act or omission" and insert:
to a person who is not a member of the association for an act or omission
of the association

AMENDMENT NO. 5

On page 6, line 7, strike out "Noth-"

AMENDMENT NO. 6

On page 6, strike out lines 8, 9, and 10, and insert:

(b) Nothing in this section in any way affects the rules of law which determine the liability between an association and a member of the association.