

Commissioner Primarily Responsible: Stanton
9/11/68

Memorandum 68-84

Subject: Suggested New Topic - The Right of Nonresident Aliens
to Inherit

The staff suggests that the Commission should request authority to make a study of whether the statutes relating to the right of nonresident aliens to inherit should be repealed or revised.

Attached as Exhibit I is the statement that could be included in our Annual Report if the Commission determines that it wishes to study this topic. There have been a number of law review articles and notes written on this problem in the past year. It is likely that the Stanford Law Review will write a note on the problem if it is not already "written out." Hence, we believe that we could make a recommendation on this topic without having to devote a significant amount of resources to preparing a background research study.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

A study to determine whether the statutes relating to the right of
nonresident aliens to inherit should be repealed or revised

The California Law Revision Commission submitted a recommendation¹
to the Legislature in 1959 that Probate Code Section 259 and related
sections pertaining to the right of nonresident aliens to inherit be,
in effect, repealed and that additional legislation on this subject
be enacted. The legislation² recommended in 1959 was not enacted.³

In January 1968, the United States Supreme Court in Zschernig v.
Miller,⁴ held an Oregon statute similar to Probate Code Section 259
unconstitutional. On June 5, 1968, a California Superior Court in
Los Angeles held Probate Code Section 259 unconstitutional.⁵ Accordingly,
there is a need for a study to determine whether the existing California
statutes relating to the right of nonresident aliens to inherit should
be repealed or revised.

-
1. Recommendation and Study Relating to the Right of Nonresident
Aliens to Inherit, 2 Cal. L. Revision Comm'n Reports B-1 (1959).
 2. Senate Bill No. 160, 1959 Regular Session.
 3. See 2 Cal. L. Revision Comm'n Reports N-6 (1959).
 4. 88 Sup. Ct. Rptr. 664 (1968).
 5. In re Estate of Kraemer, Los Angeles Superior Court, No. P 454 208
(Joseph L. Call, Judge Superior Court). The Memorandum of Opinion
is reported in full in Los Angeles Daily Journal Report Section
for June 18, 1968, at pages 9-13.