

3/15/76

Memorandum 76-76

Subject: Annual Report (Report on unconstitutional statutes)

Attached to this memorandum as Exhibit I (pink pages) is a draft of the Commission's Report on statutes Repealed by Implication or Held Unconstitutional, which will be printed in the Annual Report.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

EXHIBIT I

REPORT ON STATUTES REPEALED BY IMPLICATION
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides.

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive, the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.¹ It has the following to report:

(1) No decision of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Three decisions of the Supreme Court of California held statutes of this state unconstitutional.²

1. This study has been carried through 96 S. Ct. 3235 (Aug. 1, 1976) and 17 Cal.3d 546 (Aug. 3, 1976).

2. Two other California Supreme Court decisions imposed constitutional qualifications on the application of state statutes without invalidating any statutory language. *Valley Bank of Nevada v. Superior Court*, 15 Cal.3d 652, 542 P.2d 977, 125 Cal. Rptr. 553 (1975), held that the discoverability of a bank's confidential customer information under civil discovery statutes is qualified by the right of privacy guaranteed by Article I, Section 1, of the California Constitution, and required that the bank make reasonable efforts to notify the customer of the pendency and nature of the proceedings, thereby affording the customer an opportunity to object to disclosure by appropriate means. *In re Arthur W.*, 16 Cal.3d 226, 545 P.2d 1345, 127 Cal. Rptr. 641 (1976), held that due process requires that a juvenile court order issued upon a supplemental petition (brought under Section 777 of the Welfare and Institutions Code) to modify a previous order be based on proof beyond a reasonable doubt that the minor committed the acts of misconduct charged because such an order may commit the minor to the Youth Authority.

In T. H. Cobb Co. v. County of Los Angeles,³ the court stated that the authorization contained in former Section 2914 of the Revenue and Taxation Code⁴ for a tax sale without a prior administrative hearing is an unconstitutional denial of due process.

In Citizens for Jobs and Energy v. Fair Political Practices Commission,⁵ the court held unconstitutional the campaign spending limitations for statewide ballot propositions contained in Government Code Sections 85300-85305 as violative of freedom of speech guaranteed by the First Amendment to the United States Constitution.⁶

In People v. Olivas,⁷ the court held that Section 1773 of the Welfare and Institutions Code results in an unconstitutional denial of equal protection guaranteed by Article I, Section 7 of the California Constitution and the Fourteenth Amendment to the United States Constitution to the extent that it authorizes the California Youth Authority to maintain control over misdemeanants committed to its care for any period of time in excess of the maximum jail term permitted by statute for the offense committed.

-
3. 16 Cal.3d 606, 547 P.2d 431, 128 Cal. Rptr. 655 (1976). Although the court carefully analyzed the due process issue, its analysis should be considered as dictum because the plaintiff did not suffer any unconstitutional deprivation and prevailed on other grounds.
 4. Section 2914 of the Revenue and Taxation Code was renumbered as Section 2951 in 1974. See Cal. Stats. 1974, Ch. 908, § 2.
 5. 16 Cal.3d 671, 547 P.2d 1386, 129 Cal. Rptr. 106 (1976).
 6. Sections 85300-85305 of the Government Code were enacted as part of the Political Reform Act of 1974, a statewide initiative measure (Proposition 3) approved at the June 4, 1974, primary election. See Cal. Stats. 1974, at A-179. By its terms, the act "may be amended to further its purposes" by a two-thirds vote of each house of the Legislature, signed by the Governor, if at least 40 days prior to passage in each house the bill in its final form has been delivered to the Fair Political Practices Commission and persons who have requested notice. Govt. Code § 31012(a). The act may for any purpose "be amended or repealed by a statute that becomes effective only when approved by the electors." Govt. Code § 31012(b).
 7. 17 Cal.3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).