

9/11/78

Memorandum 78-60

Subject: Annual Report (Report on Statutes Repealed by Implication  
or Held Unconstitutional)

Attached to this memorandum is a staff draft of the Report on  
Statutes Repealed by Implication or Held Unconstitutional which is to be  
included in the 1978 Annual Report.

Respectfully submitted,

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Staff Counsel

REPORT ON STATUTES REPEALED BY IMPLICATION  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The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.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 reviewed the decisions of the United States Supreme Court and of the California Supreme Court published since the Commission's last Annual Report was prepared,<sup>1</sup> and has the following to report:

(1) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

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

(3) Three decisions of the California Supreme Court held state statutes unconstitutional.<sup>2</sup>

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1. This study has been carried through 98 S. Ct. 3148 (Adv. Sh. No. 18A, July 15, 1978) and 21 Cal.3d 840 (Adv. Sh. No. 23, Aug. 29, 1978).
  2. Two other decisions of the California Supreme Court imposed constitutional qualifications on the application of state statutes without invalidating any specific statutory language:
    - In *Britt v. Superior Court*, 20 Cal.3d 844, 574 P.2d 766, 143 Cal. Rptr. 695 (1978), the court held that a discovery order seeking the wholesale disclosure of plaintiffs' affiliations and activities in certain associations unconstitutionally infringed upon the right of associational privacy.
    - In *Jesse W. v. Superior Court*, 20 Cal.3d 893, 576 P.2d 963, 145 Cal. Rptr. 1 (1978), the court held that after a referee had dismissed charges against a juvenile, a de novo hearing before a juvenile court judge to determine the juvenile's status as a ward of court pursuant to Welfare and Institutions Code Sections 559 and 560 (now Sections 253 and 254) exposed the juvenile to double jeopardy in contravention of the fifth amendment to the United States Constitution.

In Isbell v. County of Sonoma,<sup>3</sup> the court held that Code of Civil Procedure Sections 1132(a), 1133, and 1134, which provide for confessions of judgment in nonconsumer cases, were unconstitutional under the due process clause of the United States Constitution because the confession was insufficient to show that the defendant had voluntarily, knowingly, and intelligently waived due process rights to notice and an opportunity for a hearing.

In Rice v. Alcoholic Beverage Control Appeals Board,<sup>4</sup> the court held that the liquor retail price maintenance provisions of Business and Professions Code Section 24755 and its implementing regulations violate the antitrust policies of the Sherman Act and thus are unconstitutional under the supremacy clause of the United States Constitution.

In Merco Construction Engineers, Inc. v. Municipal Court,<sup>5</sup> the court held that Code of Civil Procedure Section 90 (now Section 87), which permits a nonlawyer director, officer, or employee to appear for a corporation in municipal court, is unconstitutional under the separation of powers clause of the California Constitution pursuant to which the power to make rules for admission to the practice of law is vested in the judicial branch.

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3. 21 Cal.3d 61, 577 P.2d 188, 145 Cal. Rptr. 368 (1978).

4. 21 Cal.3d 431, 579 P.2d 476, 146 Cal. Rptr. 585 (1978).

5. 21 Cal.3d 724, 581 P.2d 636, 147 Cal. Rptr. 631 (1978).