

8/9/60

Supplement to Memorandum No. 63 (1960)

Subject: 1961 Annual Report

1. At the July 1960 meeting a motion was adopted that dissents to Commission recommendations not be indicated in the recommendation submitted to the Legislature and that a statement be added to the Annual Report to indicate that this is the Commission's policy.

The following statement is submitted for the Commission's consideration. It might be added as a footnote to the second sentence of the fifth paragraph on page 3 of the 1961 Annual Report (Memorandum No. 63(1960)).

In some instances one or more members of the Commission may dissent to all or part of a recommendation submitted to the Legislature by the Commission. The established practice of the Commission is that these dissents are not indicated in its recommendation to the Legislature.

2. 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The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.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 we have heretofore read the advance sheets of the reports of the California Supreme Court and the United States Supreme Court and reported decisions handed down, since the Commission was established, holding California statutes unconstitutional. No search has been made for

earlier decisions holding California statutes unconstitutional.

The Commission has, from time to time, discussed whether a systematic search for such decisions should be undertaken. In the past the feeling has been that the time and effort required for such a search was not justified in view of the other assignments of the Commission. Periodically, Ralph Kleps has submitted a list of all California statutes which Shepard's California Citations indicates have been held unconstitutional. Attached as Exhibit I is the latest such list. It is presented at this time, together with Mr. Kleps' letter of transmittal, for your information and consideration in connection with the 1961 Annual Report.

3. The first sentence of the paragraph designated "(3)" on page 11 of the 1961 Annual Report should be revised to read:

(3) Two decisions of the Supreme Court of California holding statutes of the State unconstitutional in part have been found.

The following paragraph should be added at the end of page 11 of the 1961 Annual Report:

In Forster Shipbuilding Co. v. County of Los Angeles,<sup>41</sup> the Supreme Court unanimously held the first paragraph of Section 107.1 of the Revenue and Taxation Code invalid on the ground that under Section 14 of Article XIII of the California Constitution the Legislature does not have the power to declare a possessory interest arising out of a lease of exempt property to be personal property within the meaning of that section.

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<sup>41</sup> 54 Adv. Cal. Rep. 443, xxx P.2d xxx, x Cal. Rptr. xxx (1960).

On page 12 of the 1961 Annual Report, delete the period at the end of the second paragraph and add: "and the repeal of the first paragraph of Section 107.1 of the Revenue and Taxation Code."

4. On page 6 of the 1961 Annual Report, the underscored material will appear in boldface type in the printed report.

On page 7 of the 1961 Annual Report, the heading "Other Studies in Progress" will appear in boldface type in the printed report and will be in the same form as the comparable boldface heading on page 6.

The underscored material on pages 7 and 8 of the 1961 Annual Report will appear as italics in the printed report.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

EXHIBIT I

Sacramento, California  
August 4, 1960

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
Stanford School of Law  
Stanford, California

Dear John:

I regret that I will miss the August meeting of the Commission, as well as the July meeting. During July Pat and I were at Tahoe, and the August meeting is scheduled for the week end on which we plan to go to Ashland with our family for a few days of Shakespeare.

If I were able to attend the August meeting, I would deliver the enclosed material to you with a word of explanation, and this letter is designed to serve the same purpose. While the Law Revision Commission has the responsibility of reporting to the Legislature concerning statutes held unconstitutional, we have periodically made a survey solely for the purpose of assisting the Commission. The enclosed report was prepared pursuant to this practice on our part, and I send it along with the thought that it might be of some use to you in connection with the Commission's duties.

Regards,  
S/ Ralph N. Kleps  
Ralph N. Kleps  
Ex Officio Member

RNK:r

EXHIBIT I

July 20, 1960

UNCONSTITUTIONAL CODE SECTIONS

CIVIL CODE

Secs. 224m, 224n (U) - 313 Pac. 2d 610

CODE OF CIVIL PROCEDURE

Sec. 284 (Up) - 13 Cal. 2d 368  
90 Pac. 2d 65  
28 Cal. App. 2d 769  
70 Pac. 2d 721  
13 Cal. 2d 370  
90 Pac. 2d 64  
28 Cal. App. 2d 771  
70 Pac. 2d 722

Sec. 437a (U) - 114 Cal. App. 718  
300 Pac. 885

Sec. 1209 (Up) - 1 Cal. 2d 630  
36 Pac. 2d 370  
14 Cal. 2d 465  
94 Pac. 2d 983, revs'd on other  
grounds  
314 U.S. 252

Sec. 1983 (U) - 291 U.S. 82  
78 L. Ed. 664

PENAL CODE

Sec. 337.5 (U) - 105 Cal. App. 2d Supp. 852  
234 Pac. 2d 786

Sec. 361 (U)  
(Up) - 49 Cal. 2d 410  
- 317 Pac. 2d 974  
306 Pac. 2d 61

Sec. 647 (Up) - 53 Adv. Cal. 791  
3 Cal. Rept. 364  
350 Pac. 2d 117

Secs. 1408-1409 (Up) - 12 Cal. App. 582  
108 Pac. 57  
140 Cal. App. 2d 133  
295 Pac. 2d 4

AGRICULTURAL CODE

- Sec. 580 (U) - 134 Cal. App. 2d 73  
285 Pac. 2d 344

BUSINESS AND PROFESSIONS CODE

- Sec. 16723 (U) - 41 Cal. 2d 719  
264 Pac. 2d 32  
253 Pac. 2d 983

EDUCATION CODE

- Sec. 904 (Up) - 326 Pac. 2d 634

FINANCIAL CODE

- Sec. 3390-3391 (Up) - 98 Fed. Supp. 313

GOVERNMENT CODE

- Sec. 69500 (U) - 141 Cal. App. 2d 771  
298 Pac. 2d 69

INSURANCE CODE

- Sec. 1610 (Up) - 169 Fed. Supp. 845

LABOR CODE

- Sec. 1131-1136 (U) - 30 Cal. 2d 646  
184 Pac. 2d 895

PUBLIC RESOURCES CODE

- Sec. 3600 (Up) - 29 Cal. 2d 773  
177 Pac. 2d 913  
157 Cal. App. 2d 609  
321 Pac. 2d 504

PUBLIC UTILITIES CODE

- Sec. 530 (Up) - 141 Fed. Supp. 169  
335 U.S. 535  
2 L. Ed. 2d 473  
78 Sup. Ct. 447
- Sec. 762 (Up) - 192 Cal. 307  
219 Pac. 983

REVENUE AND TAXATION CODE

Sec. 32 (U)

- 337 U.S. 513, 546  
2 L. Ed. 2d 1460, 1468  
78 Sup. Ct. 1333, 1340

Sec. 214 (Up)

- 150 Cal. App. 2d 53  
309 Pac. 2d 502

WATER CODE

Sec. 43508 (V)

- 179 Adv. Cal. App. 310  
3 Cal. Rept. 637

Sec. 51420 (Up)

- 40 Cal. 2d 235  
253 Pac. 2d 651