

1/16/62

Supplement to Memorandum No. 1(1962)

Subject: 1962 Annual Report

A few days ago we sent you a copy of the page proofs for the 1962 Annual Report of the Law Revision Commission.

We have received comments from Commissioners McDonough and Morrison on the report. These comments, together with some staff revisions, are indicated below. We propose to change the Annual Report as indicated below unless an objection is raised at the meeting to the change. Some of the changes are departures from the language of previous reports, but these are recommended by the staff and Commissioner McDonough.

The following are the changes to be made in the page proofs of the 1962 Annual Report:

(1) Page 1 (Galley KK-3), Letter of Transmittal.

Delete the reference to "California Law Revision Commission" and the address, and insert "Letter of Transmittal." This change will conform to the format used in previous reports.

Revise the body of the letter of transmittal to read: "The California Law Revision Commission herewith submits this report of its activities during the year 1961." The deleted material merely repeats in brief the Commission's functions and procedures which are explained in detail in the first section of the report.

(2) Page 5 (Galley KK-5).

Delete the first sentence of the paragraph beginning at the

bottom of page 5 and insert:

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature.

(3) Page 6 (Galley KK-5).

In the first line of the last paragraph, delete "two Constitutional Amendments" and insert "two proposed constitutional amendments". In the last sentence in the same paragraph insert "proposed constitutional amendment" for "Constitutional Amendment".

(4) Page 7 (Galley KK-6).

Delete "Honorable Vaino H." and insert "Mrs." at the end of the third paragraph.

(5) Page 7 (Galley KK-6).

We will check to give Ralph Kleps the title he prefers. The title we use in the Annual Report is taken from a statute section establishing his salary. We understand, however, that he prefers the title "Director of the Administrative Office of the Courts."

(6) Page 17 (Galley KK-11).

Revise the introductory paragraph to read:

In addition to the topics included in the legislative program of the Commission, the Commission during 1961 had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study.

(7) Page 19 (Galley KK-12).

Under heading Studies for Future Consideration, second paragraph: change "two Constitutional Amendments" to "two proposed constitutional amendments".

(8) Page 19 (Galley KK-12).

Delete "which are of" in the last line on page 19.

(9) Page 20 (Galley KK-12).

Heading of proposed new topic will be set in bold face italic type and revised to read: "A study to determine whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner."

(10) Page 20 (Galley KK-12).

The second sentence of the second paragraph under the new topic is changed to read: "Hence, the courts imputed the contributory negligence of one spouse to the other because the negligent spouse otherwise would share in the compensation paid for an injury for which he was partially responsible."

(11) Page 21 (Galley KK-13).

In the first paragraph, line 6, delete "legally consent" and insert "consent (within the meaning of Section 17150)" and in the same paragraph delete "legally consent to the use of the vehicle" and insert "consent (within the meaning of Section 17150) to the use of the vehicle."

(12) Page 21 (Galley KK-13).

In the third line from the bottom insert "should be revised or repealed" immediately following "Vehicle Code Section 17150" to conform to form of question for study as revised above. Delete the last line and insert a period after "owner" in the previous line.

(13) Page 22 (Galley KK-13).

Discussion of City of Los Angeles v. Offner:

Case name is "Offner"

Delete "because" and insert "on the ground that"

(14) Page 22 (Galley KK-13).

The staff recommends that the portion of the report relating to ACLU v. Bd. of Educ., 55 Cal.2d 167 (1961), be revised so that the nature of the statutes involved and the constitutional objections thereto are more clearly indicated. The following language is suggested;

In American Civil Liberties Union v. Board of Education,<sup>55</sup>  
Education Code Sections 16564 and 16565 were challenged on the grounds that they violate the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 10, of the California Constitution. In a four to three decision, the California Supreme Court held Section 16565 unconstitutional because it requires the governing board of a school district to deny the use of school buildings to certain proscribed organizations regardless of the purpose for which the use of the school buildings is sought. The Court also held that Sections 16564 and 16565 are unconstitutional insofar as they require the governing board of a school district to deny the use of school buildings to any organization if the board finds that such organization will use the buildings to commit certain unlawful acts. The Court said these statutes create an unconstitutional power of prior restraint upon the rights of free assembly and free speech.

The staff does not believe that the Annual Report should discuss the case at any greater length. The decision was published on January 24, 1961, early in the general session of the Legislature (three days prior to the Muskopf decision on sovereign immunity). Despite the fact that the opinion deals with a controversial subject and the Legislature had adequate opportunity to repeal or modify the statutes involved, the Legislature declined to take action upon them. The Legislature is well aware of the import of the decision; hence, it seems desirable to keep the discussion of the case brief in order to avoid provoking another controversy over the decision or our report.

Commissioner McDonough has suggested another revision of the portion of the Annual Report that discusses the ACLU case. It is attached to this memorandum as Exhibit I.

(15) Page 23 (Galley KK-14).

The recommendation should be revised to read:

Pursuant to mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Education Code Sections 16564 and 16565 to the extent that they have been held unconstitutional.

Respectfully submitted,

The Staff

In American Civil Liberties Union v. Board of Education the Supreme Court held that Section 16564 of the Education Code is unconstitutional insofar as it authorizes the governing board of a school district to deny the use of a school's civic center to an organization upon the basis of the board's determination that the civic center will be used "for the commission of any act intended to further . . . the overthrow of the Government by force, violence, or other unlawful means." The Court said that this provision is invalid in such cases because it "amounts to a censorship in advance of the right of assembly and free speech upon the mere determination of a probability of its future misuse." The Court also held unconstitutional Section 16565 of the Education Code which requires the governing board of a school district to require one making application for the use of a school's civic center to make and deliver to the board a statement that ". . . the organization on whose behalf he is making application . . . does not . . . advocate the overthrow of the Government . . . by force, violence, or other unlawful means, and that . . . it is not a Communist-action organization or Communist-front organization required by law to be registered with the Attorney General of the United States." The Court said that this statute is invalid because it ". . . closes the doors to public meetings of proscribed organizations, while leaving them open to all others, even though the particular meeting may be for an entirely lawful purpose. It thus . . . prevents assembly and free speech in school buildings by certain organizations because it

disapproves of the organization and not because of what those organizations may intend to do or say therein." Both provisions had been challenged on the ground that they violate the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 10, of the California Constitution.

In American Civil Liberties Union v. Board of Education,<sup>55</sup>

Education Code Sections 16564 and 16565 were challenged on the grounds that they violate the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 10, of the California Constitution. In a four to three decision, the California Supreme Court held Section 16565 unconstitutional because it requires the governing board of a school district to deny the use of school buildings to certain proscribed organizations regardless of the purpose for which the use of the school buildings is sought and because it, together with Section 16564, requires the governing board of a school district to deny the use of school buildings to any organization the board finds will use the buildings to commit specified unlawful acts. The Court held that this legislation creates an unconstitutional power of prior restraint upon the rights of free assembly and free speech.