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11/27/63

Memorandum No. 63-54

Subject: 1964 Annual Report (Statutes Held Unconstitutional)

The Commission previously has considered the entire annual report for 1964, except that portion of the report dealing with statutes repealed by implication or held unconstitutional.

Attached (Exhibit I) is a draft of material on this subject suggested for inclusion in the next annual report.

It is important that you read the four cited cases in Exhibit I before the meeting so that agreement may be reached on this subject. In this connection, you are reminded of the policy decision previously made that the report will not include a statement of the grounds on which statutes are held unconstitutional (see Minutes, October 1962, page 4).

With respect to the "Recommendations" portion of the report, please note that we recommend only the repeal of Section 6650 of the Welfare and Institutions Code to the extent that this section has been held unconstitutional. We do not recommend revision of the various sections of the Agricultural Code; since the Paul case involved only an attempt by the State Director of Agriculture to apply the minimum milk price law to a particular type of sale, no revision is necessary. No revision of Penal Code Section 496 is necessary; that section was revised by the 1963 Legislature to eliminate the unconstitutional portion. No revision of Code of Civil Procedure Section 1249 is necessary; that section was interpreted not to apply to valuation of public utility property under certain circumstances.

In addition to the cases cited in Exhibit I, three other cases will be of interest to the Commission. In Douglas v. California, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed.2d 811 (1963), the United States Supreme Court held unconstitutional the rules of court adopted pursuant to Penal Code Section 1235 that relate to providing counsel on appeal to an indigent defendant in a criminal case. Since only rules of court are involved, no report on this case is included in the attachment.

Dissenting in In re Patterson, 58 Cal.2d 848, 27 Cal. Rptr. 10, 377 P.2d 74 (1962), Traynor asserts (58 Cal.2d at 853-857) that the court's decision renders superfluous and unenforceable the provisions of Section 700 of the Welfare and Institutions Code, relating to the right to counsel in juvenile court proceedings. Though technically not repealed by implication, the vitality of the section is seriously undermined in this 4-3 decision. Mention is made here because of the Commission's past interest in this subject. See Recommendation and Study Relating to the Right to Counsel, Etc., in Juvenile Court Proceedings (1960), cited in Traynor's dissenting opinion.

Lastly, Commissioners recalling the hassle over the 1962 Annual Report in regard to Education Code Section 16565 will be interested in A.C.L.U. v. Board of Education, 59 Adv. Cal. 236, 28 Cal. Rptr. 712, 379 P.2d 16 (1963), reiterating that Section 16565 was indeed declared unconstitutional in the decision reported on in the 1962 Annual Report.

Respectfully submitted,

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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.<sup>1</sup> It has the following to report:

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

(2) One decision of the Supreme Court of the United States holding statutes of this State unconstitutional has been found.

<sup>2</sup>  
In Paul v. United States, the Supreme Court held unconstitutional the provisions of Chapter 17 of Division 6 of the Agricultural Code, relating to the establishment (Article 10, commencing with Section 4350) and enforcement (Article 14, consisting of Section 4410, and Article 15, commencing with Section 4415) by the State Director of Agriculture of minimum wholesale and retail prices for fluid milk and fluid cream, insofar as these provisions apply to the wholesale price of

C milk sold to the United States at military enclaves within California.

(3) No decision of the Supreme Court of California holding a statute of this State repealed by implication has been found.

(4) Three decisions of the Supreme Court of California holding statutes of this State unconstitutional have been found.

In People v. Stevenson,<sup>3</sup> the Supreme Court held unconstitutional former Section 496 of the Penal Code<sup>4</sup> insofar as it provided for a presumption of guilty knowledge on the part of one who received stolen property from a minor under the age of 18.

C In Department of Mental Hygiene v. Hawley,<sup>5</sup> the Supreme Court held unconstitutional Section 6650 of the Welfare and Institutions Code to the extent that it imposes upon designated relatives of mentally ill persons or inebriates liability for the care, support, and maintenance of such persons committed pursuant to either Section 1026 or Section 1368 et seq. of the Penal Code.

C In Citizens Utilities Co. v. Superior Court,<sup>6</sup> the Supreme Court held unconstitutional Code of Civil Procedure Section 1249, relating to the date of valuation in eminent domain proceedings, insofar as its application to a public utility would deny just compensation for certain involuntary and compulsory improvements, betterments, and additions made after the date of valuation provided for in Section 1249.

## RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages 214-216 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 6650 of the Welfare and Institutions Code to the extent that Section 6650 has been held unconstitutional.

FOOTNOTES

1. This study has been carried through 60 Adv. Cal. 361 (1963) and 374 U.S. 900 (1963).
2. 371 U.S. 245 (1963).
3. 58 Cal.2d 794, 26 Cal. Rptr. 297, 376 P.2d 297 (1962).
4. Section 496 of the Penal Code was amended in 1963 to remove the constitutional objections raised in this decision. Cal. Stats. 1963, Ch. 1605.
5. 59 Cal.2d\_\_\_\_, 28 Cal. Rptr. 718, 379 P.2d 22 (1963).
6. 59 Cal.2d\_\_\_\_, 31 Cal. Rptr. 316, 382 P.2d 356 (1963).