

2/21/67

First Supplement to Memorandum 67-6

Subject: Senate Bill No. 249 (Commercial Code Revisions)

Attached as Exhibit I is a letter from the California Commission on Uniform State Laws. The letter suggests that we hold up any hearings on Senate Bill No. 249 until the California Commission on Uniform State Laws is advised by the Committee of the Permanent Editorial Board as to the revisions that should be made in Senate Bill No. 249.

We have already set all of our bills for hearing. The three bills relating to the Evidence Code--S. B. Nos. 247, 248, and 249--have been set for March 9.

We attach a copy of our report relating to Senate Bill No. 249 so that you will have the text of the proposed legislation readily available.

Jon Smock of the Judicial Council has suggested that the Commission again consider whether the phrase "is admissible as evidence" should be used in revised Section 1202 of the California Commercial Code. Although this matter has been previously considered by the Commission, Mr. Smock believes that it is undesirable to provide that any evidence "is admissible." He points out that Evidence Code Section 352 permits the court to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Mr. Smock also suggests that a revision of Commercial Code Sections 2724 and 3510 is necessary. (Text of these sections attached as Exhibit II.) He states that Evidence Code Section 352 (discussed above) should qualify the rule of admissibility stated in Section 2724 and that privileges may make inadmissible the evidence covered by Section 3510.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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1st Supp. Memo 67-6

EXHIBIT I

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California Commission on Uniform State Laws

February 17, 1967

John H. DeMouilly, Esquire
Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

Thank you for your letter of January 19th and for sending me 12 copies of the Recommendation of the Law Revision Commission indicating the changes needed in the Commercial Code to conform it to the new Evidence Code provisions on presumptions.

My latest information (as of January 23, 1967) is that the Permanent Editorial Board referred the matter of your recommendations to its Committee on Construction, and that a draft is being prepared by that Committee. Hopefully, it may be ready and we may receive it soon.

In the meantime, I would suggest that the Law Revision Commission hold up any hearings on any bill it may have introduced to carry out these recommendations until we have had an opportunity of hearing from the Committee of the Permanent Editorial Board. If you are unwilling to do this please let me know so that we can take other appropriate steps.

Very truly yours,

George R. Richter, Jr.
George R. Richter, Jr.

GRR:ac

cc: Richard H. Keatinge, Esquire, Chairman, Law Revision
Commission, and
All Members of California Commission on Uniform State Laws.

EXHIBIT II

COMMERCIAL CODE SECTIONS

2724. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

3510. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) A document regular in form as provided in the preceding section which purports to be a protest;

(b) The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) Any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.