

12/1/69

Memorandum 70-4

Subject: Procedures in Connection With Obtaining Approval of Legislative Proposals

We now know the results of our 1969 legislative program. We had four major proposals. One was enacted (powers of appointment); two (claims statute, evidence) were passed by the Legislature but vetoed by the Governor; one (leases) was defeated on the Assembly floor. Hence, the amount of "law reform" we accomplished in 1969 was not very great, and our percentage of success was not very much greater than 25 percent. I believe that much of the legislation defeated in 1969 will be enacted in 1970. However, our record in 1969 suggests that perhaps our policies and procedures with respect to obtaining approval of the Commission's recommendations need review.

The pertinent portion of the Handbook of Procedures dealing with the legislative process is set out in Exhibit I. The following are questions, I believe, that the Commission should discuss:

(1) From time to time in the past, the Commission has discussed whether it should recommend what it considers to be the best solution to a problem and then leave it to the Legislature to modify the recommendation in light of political realities, or whether political realities should be taken into account in formulating the recommendation. For example, in the field of condemnation law, should the attempt be to draw a statute that represents the ideal, or to draft one that improves the position of the property owner but is acceptable to the public entities, or to draw something in between? (You will recall that the entire 10-man Penal Code Commission was dismissed because it made "way out" recommendations.)

Assuming for the moment that the recommendation should represent the ideal, or something less than what is politically acceptable, how can it be made politically acceptable during the legislative session? What role should the Commission play in making the recommendation politically acceptable? For example, it is obvious that the various public entities feel they cannot "live with" the revision of the plan or design immunity recommended by the Commission and, even if the Legislature could be persuaded to pass the bill, the Governor would undoubtedly veto it. Just what does the Commission wish to do now and during the session with respect to this proposal?

(2) The Commission has an excellent relationship with both the Senate and Assembly Judiciary Committees. These Committees, almost without exception, are the ones that determine the fate of our bills. All measures submitted to the 1969 Legislature were reported favorably by the the legislative committees in both houses. However, one of the 1969 measures (leases) was defeated on the Assembly floor. After the September 1969 meeting, the counsel for the Assembly Judiciary Committee, noting that our proposals often make significant changes in the law, expressed the view to me that these Commission bills sometimes have great difficulty on the floor of the Assembly, first, because the author sometimes fails to push the bill aggressively among the other members of the respective houses and, second, because these bills require more detailed and individual explanation to those members. In short, he thought that much more "lobbying" of all the lawyer members of the Assembly was needed. When this matter was discussed

briefly at the September 1969 meeting, the legislative members expressed the view that the Executive Secretary should be free to contact all members of the Legislature and be permitted to attempt to persuade them that the Commission's recommendations would be desirable enactments. This would be a significant change in our present procedure. (See Exhibit I attached.) Does the Commission wish to make any modifications in this respect? If so, what changes should be made? In this connection, note that Government Code Section 10308, which applies only to the Law Revision Commission, provides:

10308. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 10335, advocate the passage or defeat of any such legislation by the Legislature or the approval or veto of any such legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairman. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his official capacity as such employee or member.

The staff suggests the following procedure. A letter should be sent to each lawyer member of the Assembly a week or so before a particular proposal will come up to vote. The letter should forward a copy of the recommendation and a brief explanation of the proposal. The letter should include a statement that a member of the Commission's staff will be available to explain the proposal to the member and to answer any questions the member may have concerning it.

(3) It should be apparent that the problem in connection with obtaining approval of legislative proposals is not just the problem of obtaining passage by the Legislature. It now appears--the Governor having vetoed two of our recent bills--that the Governor is unlikely to approve Commission bills over the objections of law enforcement representatives or the

Department of Public Works. Formerly, individual members of the Commission were able to present the Commission's position before the Governor on an informal basis. I can recall only one instance in the last 11 years where a Commission bill was vetoed by the Governor and that was only after the Governor held a hearing, several hours long, before he decided to veto the bill. (The bill involved was an eminent domain bill.) Early in October of last year, I discussed this matter with the Governor's legal affairs secretary and he said that I would be provided an opportunity to discuss any Commission bill that is being considered for a veto with the appropriate member of the Governor's staff. This would provide the Commission with an opportunity to "explain" a bill that is in danger of being vetoed before a final decision is made by the Governor's office. (I personally believe, however, that no amount of "explaining" will persuade the Governor's office to approve a bill (like the plan or design bill) that will result in a significant increase in governmental costs.) Is there anything else we can do to improve our success with the Governor? We are introducing in 1970 two bills that passed the Legislature in 1969 but were vetoed by the Governor. Perhaps the Commission might wish to have these bills introduced by a member of the Legislature who has some influence in the Governor's office so that the chances of obtaining the Governor's approval will be improved. The Commission has already determined that Assemblyman Hayes will author the lease bill in 1970.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

EXHIBIT I

CHAPTER THREE

RELATIONSHIP WITH LEGISLATURE

INTRODUCTION OF BILLS

All Commission bills are introduced by the legislative members of the Commission.<sup>1</sup> Both legislative members of the Commission normally are listed as sponsors of Commission bills and other measures.<sup>2</sup> The Commission is not adverse to allowing other members of the Legislature to be co-authors of its bills.<sup>3</sup> Ordinarily, Commission bills will be introduced in the form in which they are published by the Commission and later<sup>4</sup> amended to reflect changes which the Commission believes desirable.

INTERIM COMMITTEES

The Commission is agreeable to a proposal of an interim committee that the Commission present its legislative program to the interim committee prior to the legislative session.<sup>5</sup>

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CONTACTING INDIVIDUAL MEMBERS OF LEGISLATURE

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless he has raised questions about the Commission's bills in committee or otherwise and it seems likely that the member does not fully

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1. Minutes, January 1959.
  2. Minutes, March 1962.
  3. Minutes, January 1959.
  4. Minutes, January 1959.
  5. Minutes, October 1959.
  6. Minutes, April 1957.

understand the Commission's recommendation or the reasons for it. If in such circumstances the legislative member of the Commission who is carrying the bill believes it would be desirable to have the Executive Secretary discuss the bill with the member who has raised the question, the legislative member should call the person in question and ask him whether he would be willing to have the Executive Secretary see him in his office to answer such questions as he may have about the bill and otherwise explain it. The Executive Secretary should not contact the members individually unless and until the legislative member has made a call and arranged for him to do so.

#### ACCEPTANCE OF AMENDMENTS AFTER INTRODUCTION IN LEGISLATURE

Whenever possible after Commission recommended legislation has been introduced in the Legislature, the Commission (or, if time does not permit, the Chairman) should be given an opportunity to review amendments to be made to the bills except for amendments made by a legislative member on his own initiative.<sup>1</sup>

The legislative member of the Commission carrying the bill and the Executive Secretary are authorized to agree to an amendment proposed in the course of a legislative committee hearing on a Commission bill so long as the amendment does not depart from the basic policy of the Commission with respect to the particular bill.<sup>2</sup>

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1. Minutes, February 1965.  
2. Statement of existing practice.