

9/18/70

Memorandum 70-105

Subject: Annual Report - Report on Unconstitutional Statutes

The attached draft of the portion of the Annual Report dealing with statutes held unconstitutional is presented for approval for printing. Appended are copies of each of the pertinent Supreme Court decisions.

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REPORT ON STATUTES REPEALED BY IMPLICATION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The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.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. It has the following to report:

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of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Four decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found.

The California Supreme Court, in McCallop v. Carberry² and a companion case,³ held that California's prejudgment wage garnishment procedures⁴ violated procedural due process under the rationale of the

1. This study has been carried through 90 S. Ct. 2354 (1970) and 3 Cal.3d 88 (1970).

2. 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970).

3. Cline v. Credit Bureau, 1 Cal.3d 908, 464 P.2d 125, 83 Cal. Rptr. 669 (1970)(mem.).

4. See generally Cal. Code Civ. Proc. §§ 537-561.

United States Supreme Court decision in Snaidach v. Family Finance Corp.⁵

In a related case,⁶ the Court refused to render an advisory opinion whether California's attachment procedures generally are constitutional as applied to other civil actions. The 1970 Legislature enacted a measure which exempts earnings from prejudgment attachment.⁷ The Law Revision Commission is currently studying whether the law relating to attachment, garnishment, and property exempt from execution should be revised.⁸

The California Supreme Court, in City of Carmel-by-the-Sea v. Young,⁹ held that the 1969 Conflicts of Interest Law¹⁰ is an unconstitutionally broad violation of the constitutional right of privacy and is therefore void in its entirety.¹¹

5. 395 U.S. 337 (1969).

6. People ex rel. Lynch v. Superior Court, 1 Cal.3d 910, 464 P.2d 126, 83 Cal. Rptr. 670 (1970).

7. Cal. Stats. 1970, Ch. . See Cal. Code Civ. Proc. §§ 537 and 690.6 as amended. [AB 2240 (1970 Reg. Sess.; Hayes, Brathwaite).]

8. See Cal. Stats. 1957, Res. Ch. 202, p. 4589.

9. 2 Cal.3d 259, 466 P.2d 225, 85 Cal. Rptr. 1 (1970).

10. Cal. Govt. Code §§ 3600-3754 (West Supp. 1970).

11. The affected sections are Government Code Sections 3600-3704, relating to disclosure of financial interests, but not Sections 3750-3754, relating to political contributions.

In Castro v. State,¹² the California Supreme Court held that the English literacy voting requirement--imposed by Article II, Section 1, of the California Constitution, and implemented by Elections Code Sections 100, 200, and 310(h)--violated the equal protection clause of the Fourteenth Amendment when applied to persons otherwise qualified to vote who are literate in Spanish but not in English. Resolution Chapter 308 of the Statutes of 1969 proposed an amendment to Section 1 of Article II of the Constitution to extend the franchise to all California citizens who are literate in Spanish.

Section 40 of Article XIII of the California Constitution¹³ and its two implementing statutes, Government Code Section 43614 and Education Code Section 21754, require a two-thirds majority vote for passage of municipal and school district bond elections. The California Supreme Court, in Westbrook v. Mihaly¹⁴ and three companion cases,¹⁵ held these requirements of more than a simple majority unconstitutional, in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

12. 2 Cal.3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970).

13. Formerly numbered Cal. Const., Art. XI, § 18.

14. 2 Cal.3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1970).

15. Alhambra City School Dist. v. Mize, 2 Cal.3d 806, 471 P.2d 515, 87 Cal. Rptr. 867 (1970)(mem.); Larez v. Shannon, 2 Cal.3d 813, 471 P.2d 519, 87 Cal. Rptr. 871 (1970)(mem.); Foytik v. Aronson, 2 Cal.3d 818, 471 P.2d 521, 87 Cal. Rptr. 873 (1970)(mem.).