

#39

3/3/71

Memorandum 71-17

Subject: Study 39 - Attachment, Garnishment, Exemptions From Execution
(Research)

Professor Riesenfeld has sent the attached letters (Exhibit I) indicating that the sheriff in Alameda is unwilling to allow him to study the civil files to determine what use is being made of attachment and the problems that would be involved in revision of the law in this area.

Consideration should be given to proposing legislation at the current session of the Legislature to making such files available to the Commission. Possibly such legislation should provide that the information secured is confidential and may be published only in such way as will not permit identification of individual cases. See for example, Exhibit II, setting out sections of the Personal Income Tax Law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memorandum 71-17

EXHIBIT I

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA 94720

March 1, 1971

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

Dear John:

This letter hit me like a ton of bricks, and seriously impedes the progress of my study. Perhaps we should discuss it at our next meeting.

Sincerely yours,

Stefan A. Riesenfeld

SAR:cp
encl.

COUNTY OF ALAMEDA

FRANK I. MADIGAN

Sheriff

COURTHOUSE
1225 FALLON STREET
OAKLAND, CALIFORNIA 94612
444-0844
832-0176
TWX 415-891-9540



February 22, 1971

Alexander J. Krem
6677 Girvin Drive
Oakland, California

Re: Study of Pre-judgment attachments

Dear Sir:


This is to inform you that contrary to what you and Professor Riesenfield were told when you visited this office, we will be unable to allow you to study the Civil files listed in your letter of February 19, 1971.

Both Sheriff Madigan and County Counsel are of the opinion that the Sheriff is the agent for private parties and any information he receives is confidential in nature and it is not for public record. The results of the proceedings of the Sheriff are a matter of record and may be found in the court files.

Very truly yours,

FRANK I. MADIGAN, Sheriff

By


H. M. Ziehn, Captain

HMZ/jtc

Memorandum 71-17

EXHIBIT II
(Revenue & Taxation Code)

§ 19281.

The Franchise Tax Board shall preserve reports and returns for four years from the due dates thereof and thereafter until it orders them to be destroyed. Returns filed pursuant to Sections 18802, 18802.1, and 18803 shall be preserved until the Franchise Tax Board orders them to be destroyed.

§ 19282.

Except as otherwise provided in this article, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions) who in the course of his or her employment or duty has access to returns, reports, or documents required under this part, to disclose or make known in any manner information as to the amount of income or any particulars set forth or disclosed therein.

§ 19284.

Such information may upon request of a committee appointed by either the Assembly or the Senate, or both, be furnished to the committee, but it is a misdemeanor for the committee or any member, clerk, or other officer or employee thereof to disclose in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this part.

§ 19289.

This article does not prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns.