

9/6/73

Memorandum 73-77

Subject: Annual Report (Unconstitutional Statutes)

Attached are two copies of a draft of the report on statutes repealed by implication or held unconstitutional. Please make your editorial revisions on one copy and return it to the staff at the September meeting.

Respectfully submitted,

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Legal Counsel

## REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL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The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.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> The Commission reports the following:

(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of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.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.<sup>2</sup>

(3) Six decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found.<sup>3</sup>

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1. This study has been carried through 93 S. Ct. 3072 (July 15, 1973) and 9 Cal.3d 742 (August 7, 1973).
  2. The Commission notes, however, that the decision of the United States Supreme Court in Roe v. Wade, 410 U.S. 113 (1973), raises doubts about parts of the Therapeutic Abortion Act (Health & Saf. Code § 25950 et seq.) in addition to those declared unconstitutional by the California Supreme Court in People v. Barksdale, 8 Cal.3d 320, 503 P.2d 257, 105 Cal. Rptr. 1 (1972), discussed infra.
  3. In addition, the Commission notes that the California Supreme Court in In re Borzog, 9 Cal.3d 612, 510 P.2d 1017, 108 Cal. Rptr. 465 (1973), limited Penal Code Sections 407 (defining "unlawful assembly" for purposes of Section 408) and 415 (disturbing the peace) in consideration of the right to assemble peaceably and freedom of speech guaranteed by the First Amendment of the United States Constitution.

People v. Barksdale<sup>4</sup> held that Health and Safety Code Section 25951(c)(1) which established medical criteria for lawful abortions is unconstitutionally vague under the due process clauses of the California and United States Constitutions. In addition, the court invalidated Health and Safety Code Sections 25951(b) (establishing a medical committee to approve abortion requests), 25951(c)(2) (allowing abortion in cases of rape or incest), 25952 (providing a procedure for approving abortions in cases of rape and incest), and 25954 (defining "mental health"), and the first sentence of Section 25953 (prescribing qualifications for members of the medical committee).

In re Lynch<sup>5</sup> held that Penal Code Section 314--in effect, imposing a life sentence for a second conviction of indecent exposure--violates the prohibition against cruel or unusual punishments in Article I, Section 6, of the California Constitution.

Brooks v. Small Claims Court<sup>6</sup> held that Code of Civil Procedure Sections 1171 and 11711, which require the defendant in a small claims court proceeding to file an undertaking or make a deposit as a condition to an appeal, offend the due process requirements of the California and United States Constitutions.

Brown v. Merlo<sup>7</sup> held that the automobile guest statute, Vehicle Code Section 17158, violates the equal protection principles of the California and United States Constitutions.

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4. 8 Cal.3d 320, 503 P.2d 257, 105 Cal. Rptr. 1 (1972).

5. 8 Cal.3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972).

6. 8 Cal.3d 661, 504 P.2d 1249, 105 Cal. Rptr. 785 (1973).

7. 8 Cal.3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

Haman v. County of Humboldt<sup>8</sup> held Revenue and Taxation Code Section 227(a) --providing a special tax assessment for vessels whose port of documentation is in California--violates the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Ramirez v. Brown<sup>9</sup> held that, under the equal protection clause of the Fourteenth Amendment of the United States Constitution, the right of suffrage could not be denied ex-felons whose terms of imprisonment and parole have expired. Provisions violating this principle appear in Article II, Section 3, and Article XX, Section 11, of the California Constitution, and in various sections of the Elections Code which implement the constitutional disqualification.<sup>10</sup>

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8. 8 Cal.3d 922, 506 P.2d 993, 106 Cal. Rptr. 617 (1973).

9. 9 Cal.3d 199, 507 P.2d 1345, 107 Cal. Rptr. 137 (1973).

10. The affected statutes listed by the court are Election Code Sections 310, 321, 383, 389, 390, 14240, and 14246.