

10/1/74

Memorandum 74-59

Subject: Annual Report (Statutes Held Unconstitutional or Impliedly Repealed)

Attached is a draft of a portion of the Annual Report: Statutes Held Unconstitutional or Impliedly Repealed. This is presented for approval for printing.

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REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL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The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.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.¹ 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of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.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) One decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

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

In Lubin v. Panish,² the United States Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 and 18600-18603 deprived indigent persons of equal protection guaranteed by the Fourteenth Amendment and the rights of expression and association guaranteed by the First Amendment. In Knoll v. Davidson,³ the California Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 violated the equal protection clause of the Fourteenth Amendment and was "in all respects null and void"⁴ because it failed to provide methods alternative to the payment of fees for the qualification of candidates for public office. In Donovan v. Brown,⁵

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1. This study has been carried through 94 S.Ct. 3234 (Aug. 15, 1974) and 12 Cal.3d 420 (Sept. 10, 1974).
 2. ___ U.S. ___, 94 S.Ct. 1315 (1974).
 3. 12 Cal.3d 335, ___ P.2d ___, ___ Cal. Rptr. ___ (1974).
 4. 12 Cal.3d at 349, ___ P.2d at ___, ___ Cal. Rptr. at ___.
 5. 11 Cal.3d 571, 524 P.2d 137, 115 Cal. Rptr. 41 (1974).

the California Supreme Court held that the California filing fee system set forth in Elections Code Sections 6551-6555 (made a prerequisite by Section 18603 of that code for the filing of a declaration of write-in candidacy and by Section 18603 for the counting of ballots) violated the equal protection clause of the Fourteenth Amendment.⁶

D'Amico v. Board of Medical Examiners⁷ held that the Osteopathic Act of 1962⁸ and Business and Professions Code Section 2310 violate the equal protection principles of the California and United States Constitutions insofar as they forbid licensure of graduate osteopaths as physicians and surgeons regardless of individual qualifications.

People v. Superior Court⁹ held that Penal Code Section 1000.2 violates the doctrine of separation of powers contained in Article III, Section 3, of the California Constitution insofar as it requires the consent of the prosecutor before a trial court may order that a defendant be diverted into a rehabilitation program for first-time possessors of drugs.¹⁰

Adams v. Department of Motor Vehicles¹¹ held Civil Code Sections 3071, 3072, 3073, and 3074 of the garageman's lien law invalid insofar as they permit involuntary sale and transfer of a vehicle without affording the owner an opportunity for hearing because they deprive owners of due process of law.¹²

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6. In response to Lubin, legislation was enacted (Cal. Stats. 1974, Ch. 454) amending Elections Code Sections 6555 and 18603 and adding Government Code Section 16100.6. The court in Knoll, while noting the enactment of this legislation, expressed no opinion as to its constitutionality. See 12 Cal.3d at 349 n.11, ___ P.2d at ___ n.11, ___ Cal. Rptr. at ___ n.11.
 7. 11 Cal.3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974).
 8. The Osteopathic Act of 1962 was a referendum measure amending the Osteopathic Act of 1922, which was enacted by initiative. Cal. Stats. 1962, 1st Ex. Sess., Ch. 48 (4-Deering's Ann. Bus. & Prof. Code, 1961-1973 Cum. Supp., App. I at 281-286; 3A West's Ann. Bus. & Prof. Code at 332-334 (1974)); Cal. Stats. 1923 at xciii (4 Deering's Ann. Bus. & Prof. Code, App. at 523 (1960); 3A West's Ann. Bus. & Prof. Code at 326 (1974)).
 9. 11 Cal.3d 59, 520 P.2d 405, 113 Cal. Rptr. 21 (1974).
 10. For legislation dealing with the problem raised by this decision, see Cal. Stats. 1974, Ch. ___ [AB 3096].
 11. 11 Cal.3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).
 12. For legislation enacted in response to this decision, see Cal. Stats. 1974, Ch. ___ [SB 2293].

In re Kapperman¹³ held invalid subdivision (c) of Section 2900.5 of the Penal Code. Subdivision (c) limited application of Section 2900.5 (which gives persons convicted of felony offenses credit for time served in custody prior to the commencement of their prison sentence) to persons delivered into custody of the Director of Corrections on or after March 4, 1972, the effective date of the section. This limitation, which precluded persons in custody on the effective date of the section from the benefits of the section, was held to violate Article I, Sections 11 and 21, of the California Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution in that it constituted a legislative classification which was not reasonably related to a legitimate public purpose.¹⁴

In re Foss¹⁵ held that Health and Safety Code Section 11501 and its successor, Section 11352, violate the prohibition against cruel or unusual punishments in Article I, Section 6, of the California Constitution insofar as they preclude parole consideration of a repeat narcotic offender for a minimum of 10 years.¹⁶

In re Bye¹⁷ held that an individual committed under the civil addict program of the Narcotic Addiction Evaluation Authority¹⁸ has the right under the due process clause of the Fourteenth Amendment of the United States Constitution to a formal revocation hearing at the rehabilitation center prior to the revocation of his outpatient status.¹⁹

13. 11 Cal.3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).

14. The court did not invalidate the entire section but only eliminated the discriminatory classification under subdivision (c) of Section 2900.5, thus extending the statutory benefits retroactively to those whom the subdivision improperly excluded.

15. 10 Cal.3d 910, 519 P.2d 1073, 112 Cal. Rptr. 649 (1974).

16. The court also stated that the views expressed in its opinion apply with equal force to the provision of Section 11501 and its successor, Section 11352, precluding parole consideration of a third-time offender for a minimum of 15 years.

17. 12 Cal.3d 96, ___ P.2d ___, ___ Cal. Rptr. ___ (1974).

18. Welf. & Inst. Code § 3150 et seq.

19. Welf. & Inst. Code § 3151.

Grimes v. Hoschler²⁰ held Business and Professions Code Section 7113.5 violated the supremacy clause of the United States Constitution (Article VI, clause 2) in that it frustrates the objectives of the Federal Bankruptcy Act by permitting the Contractors' State License Board to revoke the license of a contractor who has been adjudicated a bankrupt.²¹

Gordon v. Justice Court²² held that the practice of allowing a non-attorney judge, qualified under Government Code Section 71601, to try a case in which a defendant faces a potential jail sentence violates the due process clause of the United States Constitution.²³

20. 12 Cal.3d 305, ___ P.2d ___, ___ Cal. Rptr. ___ (1974).

21. The court further noted that Business and Professions Code Section 7102, which provides that after revocation a license will not be reinstated or reissued without a showing that the amount of the discharged debts has been paid in full, similarly is in conflict with the Federal Bankruptcy Act and therefore invalid under the supremacy clause.

22. 12 Cal.3d 323, ___ P.2d ___, ___ Cal. Rptr. ___ (1974).

23. The court also noted that there is a strong argument that the practice of allowing a non-attorney judge to act as magistrate in a felony preliminary examination pursuant to Penal Code Sections 808 and 858 et seq. similarly deprives the defendant of due process of law.