

4/26/78

Memorandum 78-21

Subject: Legislative Program

Attached is a report on the 1978 Legislative Program. The following additional information in connection with the program may be of interest.

SB 1395 - Parol evidence rule

The State Bar Committee on the Administration of Justice has advised the Commission that it approves the Commission's proposal except that it feels that the failure to repeal the parol evidence provisions in the Civil Code will cause confusion to lawyers and the courts. Professor Sweet (who wrote the leading article on the parol evidence rule) recently told me in the course of a telephone conversation on another subject that he regreted that the Commission had left the Civil Code provisions unrepealed. The Commission previously considered a staff suggestion that these provisions be repealed but decided to retain the provisions. The bill as submitted by the Commission should be in the hands of the Governor by the time of the meeting. Accordingly, the staff believes that no useful purpose would be served by having the Commission again consider this matter.

ACR 85 - Authorizes study of four new topics

The counsel to the Assembly Judiciary Committee and Assemblyman McVittie (who will be the next Chairman of the Assembly Judiciary Committee) suggested that I amend the resolution authorizing the study of new topics to include the study of the law relating to leases of real property and landlord-tenant relations. Their primary concern is that the code provisions are in a mess; they need to be reorganized, the sections shortened, and minor revisions made. I discussed the suggestion with the counsel to the Senate Judiciary Committee to see whether he shared the view of the other persons. He also believes that a recodification is needed in this area. I believe that Assemblyman McVittie has in mind a recodification plus some substantive revisions. All three agree that the study should also consider leases of real property for occupancy by mobile homes. (It should be noted that the

Law Revision Commission has contributed to creating an unorganized mess of statutory material in this area. We have added provisions relating to mitigation of damages, abandonment of property, disposition of abandoned property, unlawful detainer actions, and liquidated damages. Others have added provisions relating to security deposits, untenable dwellings, lessee's affirmative obligations, repairs by lessee, retaliation by lessor, automatic renewals or extensions, and the like.) I then discussed the suggested study with Assemblyman McAlister. He was opposed to amending the resolution to authorize the study. He stated that the area is one of strongly emotional, conflicting interests. He believes it would be a mistake for the Commission to become involved in this area which he believes is a "can of worms." In view of Assemblyman McAlister's opposition, the resolution will not be amended to authorize the study.

The Commission already is authorized to study rights upon abandonment or termination of a lease. The proposal would expand this study to cover all aspects of leases and landlord-tenant relations. Assemblyman McVittie feels very strongly that the Commission touch is needed in this area. He would have added the study to our resolution if the resolution had not already cleared the Assembly. Does the Commission wish to include this as a suggested study in the next Annual Report? The staff recommends that we should request authority to make the study. We believe it would take not more than one month of staff time and one or two days of Commission time. We do not anticipate that the study would involve recommending many significant substantive changes. We believe this is an area where the law should be clearly stated and well organized. This is one of the functions the Commission serves.

AB 2230 - Review of resolution of necessity

This bill is opposed by Los Angeles County. The staff is attempting to eliminate this opposition.

AB 2282 - Evidence of value of property

This bill is opposed by the California Trial Lawyers Association and the State Bar Committee on Condemnation. The State Bar Committee on the Administration of Justice is also studying the bill. The basis of opposition now seems to be that the evidence rules applying to value of

property in eminent domain and inverse condemnation proceedings are too conservative in admitting evidence to apply to other proceedings. However, it would seem that, in valuing property in a marriage dissolution, for example, it would be desirable to use the more conservative rules of eminent domain than to allow the valuation testimony to range into "far out" methods of valuation that are not allowed in eminent domain. After all, in effect one spouse is selling and the other buying the property in a marriage dissolution proceeding and the value should be a reasonable and not an extreme one. On this basis, the staff believes that the Commission proposal is sound.

AB 2517 - Psychotherapist-patient privilege

There are a number of groups supporting this bill, including the California State Bar. The bill is opposed by the California Peace Officers Association and the California Association of District Attorneys.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

1978 LEGISLATIVE PROGRAM

BILL IN CONFERENCE COMMITTEE

AB 393 - Wage garnishment

The Conference Committee hearing scheduled for April 12 was cancelled. Another attempt will be made to schedule a hearing in May.

SENT TO FLOOR IN SECOND HOUSE

SB 1395 - Parol evidence rule

SB 1425 - Court commissioners under attachment law

SENT TO FINANCE COMMITTEE IN SECOND HOUSE

SB 1426 - Commissioner's compensation

Senator Deukmejian decided to amend this bill to set the per diem at \$50 in view of the reaction of various members of the Assembly to the bill. One member of the Judiciary Committee voted against committee approval of the bill.

BILLS PASSED FIRST HOUSE

ACR 85 - Authorizes study of four new topics

ACR 89 - Authorizes continued study of topics previously authorized for study

AB 2230 - Review of resolution of necessity

AB 2281 - Powers of appointment

AB 2282 - Evidence of value of property

AB 2517 - Psychotherapist-patient privilege

AB 2631 - Attachment (unlawful detainer and other matters)

DEAD

SB 623 and 624 - Nonprofit corporations

AB 2146 - Authorizes recommendations to correct defects in or to supplement legislation enacted upon Commission recommendation