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STATE OF CALIFORNIA

California Law Revision Commission

MINUTES OF MEETING

OF

July 17, 1954

Pursuant to the call of the Chairman the California Law Revision Commission met at 10 A.M., July 17, 1954, at the offices of the State Bar in the Central Tower Building in San Francisco.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman

Honorable Jess R. Dorsey, Senate

Mr. John D. Babbage

Mr. Richard C. Fildew

Mr. Bert W. Levit

Mr. John Harold Swan

Mr. Ralph N. Kleps, ex officio

Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was also present. At the invitation of the Commission, Mr. Laurence D. Kearney, Administrative Advisor of the State Department of Education, was present during a part of the meeting.

ABSENT:

Honorable Stanford C. Shaw, Assembly

Mr. Samuel D. Thurman, Jr.

A motion was made by Mr. Babbage, seconded by Mr. Levit, and unanimously passed, that the minutes of the meeting of May 22, 1954, be approved.

Education Code Project

The first subject discussed by the Commission was the Education Code revision project. The Commission first considered whether it would accept the recommendation of the Executive Secretary that steps be taken immediately to reorganize the Code along the lines indicated in his written report to the members of the Commission. This matter was very thoroughly discussed. In the course of the discussion the following points against undertaking such reorganization now were made: (1) The organization of the present Code is not perfect, but it is not ^{so} deficient as to seriously affect the usefulness of the Code; (2) there is no ideal code organization and there would doubtless be disagreement by some persons with any organization the Commission might decide upon; (3) it would not be likely that the Legislature would give favorable consideration to a bill which both reorganized the Code and made substantive changes in it; therefore, if reorganization were to be undertaken it would have to be by a separate bill for that sole purpose, and the wisdom of this is doubtful; (4) it would take a minimum of ten months to reorganize the Code; (5) In deciding whether to reorganize the Code the Commission must weigh the substantial cost involved against the gain which might be achieved, and from the evidence presently before the Commission it did not appear that the gain would outweigh the probable cost. No one stated any criticisms, however, of any of the specific proposals for reorganization contained in the Secretary's report.

At the end of this discussion Mr. Gunn made a motion which was seconded by Senator Dorsey, and passed, that no reorganization of the type recommended by the Executive Secretary should be undertaken at this time. Mr. Levit voted against the motion.

The Commission also discussed at length what its program between now and January 1 in respect of the Education Code should be. It was decided that the

Commission should submit a bill or bills in January which will accomplish, so far as the available time and personnel will permit, repeal of obsolete sections, clarification of ambiguous sections, resolution of conflicts in the Code, etc. The Commission will also submit a report to the Legislature stating what it has done and what else might be done by way of revising the Education Code. The report will contain an estimate by the Commission of the time and money necessary to accomplish the additional revision of the Code outlined in its report.

The Commission approved the proposed letter from the Commission to various legal officers and people in the field of education in California, and authorized the Executive Secretary to send the letter to the persons listed in his report to the Commission. It was suggested that the letter be sent also to the presidents of State colleges and to the head of various associations identified with public education.

Several members of the Commission suggested that the Executive Secretary's proposed study of legal opinions written concerning the Education Code might not be practicable. The point made was that many, if not most, of these opinions deal with routine matters and would, therefore, be of little or no value to the Commission, and that it would take a great deal of time to winnow out the opinions which would be helpful. It was suggested that this study be undertaken with caution, with an eye to being certain that the returns which are realized are commensurate with the effort involved. The Commission approved the incurring of necessary travel expense in making such study of legal opinions as is undertaken. It was suggested that the Executive Secretary write to a number of legal officers, such as Messrs. Westphal, Kennedy, Coakley and Gargano, telling them about the proposal to study legal opinions on the Education Code, and requesting that they advise him of any specific opinions written by their respective offices which would be of particular value.

The Commission approved the Executive Secretary's suggestion that attempt be made to have representative people in the field of education undertake to study various parts of the Code for the purpose of making suggestions for its revision.

With respect to the Executive Secretary's proposal that the people working on revision of the Education Code at Stanford make a study of problems and practices in the field of education it was agreed that it would not be worth while to have these people interview educators to find out in a general way what their problems are. It was further agreed, however, that it would be well, after preliminary work on a particular subject has been done at Stanford and tentative ideas have been developed for revision of the Code sections dealing with that subject, to discuss the subject and the proposed revisions with informed people in the field of education. The Commission approved the incurring of such necessary travel expense as would be involved in holding such discussions.

Mr. Kearney was asked to state his views as Administrative Advisor to the Department of Education. He said that the Department has prepared a list of Education Code sections which are either obsolete or in need of technical revision, and that the Department is in some doubt as to whether it should sponsor a bill for this purpose or whether it should turn this information over to the Commission. Mr. Kearney was told that the view of the Commission is that it should not presume to tell the Department of Education what it should do, but that the Commission invites the Department's attention to the Education Code revision project and will welcome any suggestions which the Department might be willing to send along to the Commission for consideration. It was emphasized that the Commission must rely upon the Department, as well as upon other persons and organizations in the field of education in California, for help in finding defects in the Code.

Agenda Project

The Commission discussed the Executive Secretary's written report on the Agenda project and the questions raised therein. The Commission approved the form developed by the Executive Secretary for reporting suggested topics of study for the Commission's consideration. It was decided that the Commission will not adopt a strict or literal interpretation of the words "anachronism" and "inequity" in its governing statute in developing a calendar of topics proposed for study. The Secretary reported that in his opinion the experience to date has demonstrated that the people working on the Agenda project at Stanford would not be able to produce as many suggested topics for study by analysis of the New York Law Revision Commission reports as by a study of law reviews published by California law schools. It was, accordingly, decided that the work at Stanford should be confined for the immediate future to a study of such law reviews and that a comprehensive analysis of the New York Law Revision Commission's reports should be postponed. Members of the Commission pointed out that another fruitful source of calendar topics would be articles in the various bar journals published in California. Mr. Eildew pointed out that the Los Angeles Bar Journal has recently published a number of provocative articles concerning current problems in California law, and that the Lawyers' Club in Los Angeles has made a study and report concerning the summary probate provisions of the Probate Code.

Mr. Kleps suggested that the Commission should not concern itself with the California Code of Civil Procedure, leaving defects in that Code to be handled by the Judicial Council and/or the State Bar. He also recommended that the Commission not get into such fields of activity as that of the Industrial Accident Commission. After a discussion of these suggestions it was decided that the Executive Secretary should go ahead for the present reporting suggested topics of study in all fields, and that the Commission will work out its agenda policy on a case-by-case basis.

Mr. Lovitt raised the question whether the topics suggested to date by the Executive Secretary were perhaps not too narrow in scope in that they dealt only with fragmentary parts of the Law instead of suggesting larger areas for more comprehensive treatment. He suggested, by way of example of the latter, the possibility that the Commission might study whether the Federal Rules of Civil Procedure should be adopted in California. Mr. Clegg commented in this connection that some people have thought that the New York Law Revision Commission has concerned itself too much with small problems rather than large ones, and as a result has not a great deal to show for its twenty years of work.

In connection with the Agenda project, the Executive Secretary reported that the letters to non-legislators announcing the existence of the Commission and soliciting ideas for law revision have not yet gone out but that their preparation is now under way. He submitted a list of some 1,400 potential addressees of such a letter, and the Commission decided that the letter should go to all of these persons, the purpose being to give the widest possible circulation to the report of the Commission's organization and its request for suggestions for revision of California law.

Program and Personnel

The Executive Secretary reported that as of July 15, 1954, Stanford had expended \$355.50 under the Agenda contract, leaving \$1,644.50 remaining of the \$2,000 committed to that contract. The question was raised as to how many proposed topics for study might be produced by the people working on the Agenda project at Stanford, and the Secretary said that it might be upward of a hundred. He recommended that the work be carried on to the full extent of the \$2,000 available under the contract stating that the New York Law Revision Commission made a study in its early years of New York decisions to obtain ideas which produced 500 ideas and that these have served as a backlog ever since. The Commission approved this recommendation.

The Executive Secretary reported that as of July 15, 1954, Stanford had expended \$834.96 under the Education Code contract, leaving \$9,165.04 yet to be expended of the \$10,000 committed to that contract. He also reported that salaries for research assistants under this contract now amount to \$1,225 per month. The Executive Secretary reported that it has been necessary for Stanford to hire clerical and typing help during the last week in connection with the work on the Agenda and Education Code contracts and that it will probably be necessary for Stanford to hire a full-time stenographer to provide typing and clerical assistance to the people working on these contracts. The Executive Secretary also reported that Stanford has been considering the hiring of additional research personnel to work on the Education Code contract.

These reports and proposals were approved by the Commission.

General

1. Chairman Stanton reported to the Commission that the procedure adopted in New York for liaison between the New York State Bar Association and the New York Commission is the appointment by the Bar Association of a standing Committee to cooperate with the Law Revision Commission. He reported also that Mr. John Macdonald, Executive Secretary of the New York Commission, had suggested that the California Commission ought to ask the State Bar to appoint a special committee to cooperate with the Law Revision Commission. Mr. Macdonald said if this assignment were given to an existing committee, such as the Committee on the Administration of Justice, which is already overburdened, the Commission's proposals would receive less attention than they would if a special committee were created for this purpose. After discussion of this problem it was moved by Mr. Fildes, seconded by Mr. Swan, and unanimously carried, that the Chairman be authorized to approach the President of the State Bar and

to work out with him a procedure for liaison between the Commission and the State Bar which would be mutually satisfactory.

2. The Commission then discussed whether it should have a meeting at the time and place of the meeting of the State Bar at Coronado in September. After this matter was fully discussed, it was moved by Mr. Aldew, seconded by Mr. Levit, and unanimously passed, that the Commission schedule a meeting at Coronado during the week of September 20, 1954, probably on Thursday, September 23. Members of the Commission who are present will be introduced to the Conference of State Bar Delegates at some time during the meeting of the Conference on Monday and Tuesday, September 20 and 21.

3. The Executive Secretary reported that the Commission's budget estimate for 1955-56 must be submitted by September 15. The Chairman and Executive Secretary were authorized to prepare a budget for this purpose. It was agreed that this budget would be circulated to the members of the Commission by letter for approval in the event that there is no meeting between now and September 15.

4. Mr. Kleps, the Legislative Counsel, reported to the Commission that his office has gone through its Needed Revision file and has collected from that file those items where substantive revision is needed. He delivered these items to the Commission, stating that his office will send similar items to the Commission from time to time. Mr. Kleps reported that his office will continue to report to the Legislature situations where non-substantive revision of the Codes is required.

5. The Executive Secretary reported that he has not yet been able to start the Probate Code study which the Legislature has directed the Commission to make, but that he will do so in the immediate future.

Respectfully submitted,

John E. McDonough, Jr.
Executive Secretary