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STATE OF CALIFORNIA

California Law Revision Commission

December 8, 1954

MINUTES OF MEETING

OF

NOVEMBER 26 and 27, 1954

Pursuant to the call of the Chairman, the Law Revision Commission met on November 26 and 27 at the headquarters of the State Bar in Los Angeles.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice Chairman
Honorable Jess R. Dorsey, Senate
Honorable Stanford C. Shaw, Assembly
Mr. Richard C. Fildew
Mr. Bert W. Levit
Mr. John H. Swan

ABSENT:

Mr. Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was present. The meeting on Friday, November 26, was attended by Mr. Owen Kuns of the Legislative Counsel's

Office representing Mr. Ralph N. Kleps and by Mrs. Virginia Nordby, a member of the staff working on revision of the Education Code at Stanford University.

The minutes of the meeting of the Commission on October 29 and 30, 1954, which had been distributed to the members of the Commission prior to the meeting, were corrected in one respect and unanimously approved.

The Executive Secretary reported that, pursuant to authority given to the Chairman at the last meeting, a letter had been written to the Department of Finance and the State Personnel Board requesting that a temporary position of Assistant Executive Secretary be established as of January 1, 1955 to be financed with a part of the Commission's research funds. He reported that it had been requested that the position be established as a student position for the month of January at a salary of \$250 per month and as a Junior Counsel position at a salary of \$358 per month as soon as the Civil Service list for the persons who took the examination for Junior Counsel in November 1954 is available.

The Executive Secretary reported that the Department of Finance and the State Personnel Board have approved both the Commission's contract with Mr. Paul E. Basye for the Probate Code study and the agreement extending the Agenda contract with Stanford University to June 30, 1955.

The Chairman reported that he had written a letter to the Department of Finance indicating that the Commission does not agree with the Department's view that the Executive

Secretary's position is now properly classified. He reported that the Department has been requested to have the State Personnel Board make a study of this matter and to withdraw its disapproval of the Commission's request for reclassification until the Board has made a report.

Education Code

The Executive Secretary reported that expenditures to November 15, 1954 under the Education Code contract with Stanford University totalled \$7,941.76, leaving a balance as of that date of \$2,058.24 of the \$10,000 originally committed to the contract. He reported that an addendum to the Education Code contract for the purpose of committing to it an additional \$1900 of the \$12,000 Education Code appropriation had been executed by the Chairman and the University and sent to the Department of Finance and the State Personnel Board for approval.

The Commission discussed what position it should take with respect to requests currently being received that the Commission study particular parts of the Education Code with a view to recommending revisions thereof at the forthcoming session of the Legislature. It was decided that the Commission's position should be that, due to the shortness of the time remaining before the session, such requests cannot be considered unless they come from members of the Legislature or involve purely mechanical changes, and that the persons making such requests should be so informed.

Senator Dorsey brought to the attention of the Commission two problems suggested by a recent Attorney General's opinion: (1) the proper rate of compensation to be paid to parents in lieu of furnishing school bus transportation for the children of such parents and (2) the exemption of children who live more than two miles from school from compulsory attendance at school. The Commission directed the Executive Secretary to study both of these matters with a view to proposing such revisions of the relevant Education Code sections as appear to be within the scope of the Commission's Education Code assignment.

The Executive Secretary reported that Assemblyman Ernest R. Geddes and Dr. Nolan D. Pulliam, the Chairman of the CASA committee for revision of the Education Code, had indicated to him and to the Chairman of the Commission their belief in the desirability of obtaining a deficiency appropriation to continue work on the Education Code from January 1, 1955 to September 1, 1955. The Secretary reported that he is informed that a recommendation has been made to the Governing Board of CASA by its Policy Commission that CASA sponsor a bill for this purpose and that Assemblyman Geddes and Assemblyman Don Doyle, Vice Chairman of the Assembly Committee on Education, will carry the bill in the Assembly and believe that its passage can be secured. The Secretary reported that he had told Dr. Pulliam's committee that the cost of the Education Code revision is currently approximately \$2,000 per month which means that it would cost \$16,000 to carry the work from January 1 to September 1, 1955 and approximately \$50,000 to carry it from September 1, 1955 to June 30, 1957. He reported

that the CASA committee had indicated considerable concern about asking for a \$16,000 supplement to an original appropriation of \$12,000 and had decided to recommend to CASA that approximately \$8,000 be sought to carry the work for the period January 1, 1955 to September 1, 1955 on a reduced level of activity. The Secretary reported that the members of Dr. Pulliam's committee stated that they believe that when the request for a deficiency appropriation is made the Legislature will want to have an estimate of the total cost of revising the Education Code. The Secretary stated that he does not believe that the Commission can or should give the Legislature an estimate of how long it will take to complete a revision of the Education Code or how much it will cost. The Commission then discussed the position which it should take with respect to a continuation of its Education Code assignment and to the request for a deficiency appropriation. It was recalled that at the October meeting the Commission had tentatively decided to take a wholly neutral position on these matters. Mr. Fildew stated that he believed the Commission should continue to maintain a strictly neutral position and that it should do nothing to encourage a further assignment with respect to the Education Code after January 1, 1955. Mr. Levit expressed the view that the Commission should take a more affirmative attitude toward the Education Code assignment and that it should include in its report to the Legislature an estimate of the time and money which would be required to complete a revision of the

Education Code. After the matter was discussed, Mr. Levit made a motion which was seconded by Senator Dorsey that the Commission's report state that the Commission estimates that it can complete a revision of the Education Code by January 1957 at a cost of approximately \$58,000 -- \$8,000 for the period from January 1 to September 1, 1955 and \$50,000 for the period from September 1, 1955 to June 30, 1957. (While the Commission's Education Code revision bills would be introduced in January, 1957 it would be necessary to have a staff until June 30, 1957 to do the work required during the session - responding to inquiries, drafting amendments, etc.) This motion was carried, Senator Dorsey, Mr. Swan and Mr. Levit voting for the motion and Mr. Shaw and Mr. Fildew voting against it.

The Secretary then stated that if the Education Code work is to be continued beyond January 1, 1955, it will be necessary to enter into a new contract with Stanford University, inasmuch as the present Stanford contract terminates on December 31, 1954, and to finance the continuation of the work by using the Commission's general research funds. After this matter was discussed Mr. Levit made a motion which was seconded by Mr. Swan and unanimously passed that (1) the Chairman be authorized to enter into a new agreement with Stanford University similar to the existing agreement for the period from January 1 to March 31, 1955 the cost of which to the State shall be limited to \$3,000 and (2) that the cost of the contract be charged against the Commission's general research funds. It was agreed that the Education Code

work will be discontinued if the bill to secure a deficiency appropriation is not introduced in the Legislature or is defeated. It was also agreed that if it is possible to have it do so, the deficiency appropriation bill should provide that a part of the funds appropriated may be used to reimburse the Commission's general research funds to the extent that such funds are used to finance work on the Education Code project pending the availability of the deficiency appropriation.

The Commission discussed what Education Code revisions it should recommend at the forthcoming session of the Legislature. It was decided to recommend enactment of the proposed revisions of the Code sections relating to election, appointment and recall of governing board members and, in addition, as many proposed revisions of other Code sections as can be prepared in time to be submitted.

The Commission considered the several revisions of Education Code sections recommended by Education Code Committee No. 3 (Babbage, Chairman, and Fildew). After the proposed revisions were discussed the Commission approved and adopted to be recommended for enactment by the Legislature the proposed revisions of the following sections of the Education Code:

11021	18053.5	21364
11153	18055	21647
11275	18205	22341
11291	18403	22001
11656	20320-329	22693
11674	20345.5	22722
11741	20351	22725
Title, Article 1, Chap. 1, Div. 9		23204
18003	20356	23208
18008	20543	

The Commission considered the proposed revisions of the Education Code recommended by Education Code Committee No. 2 (Swan, Chairman, and Kleps) relating to election, appointment and recall of governing board members. After these revisions were discussed and further revised, the Commission approved and adopted to be recommended for enactment by the Legislature proposed Sections 1800 through 1804, 1821 through 1856, and 1871 through 1873.

Probate Code Study

The Commission considered the Probate Code study prepared by Mr. Paul E. Basye and the revisions of the Probate Code recommended by the Probate Code Study Committee (Levit, Chairman, and Thurman) and decided that:

(1) the Commission will not propose revision of the Code sections relating to declared or probate homesteads, but will, in its Official Recommendation to the Legislature point out that there are a number of differences between these two types of homesteads which could be eliminated by certain specific legislative action.

(2) the Commission will recommend that the maximum estate as to which summary distribution may be had be

increased from \$2,500 to \$5,000.

(3) the Commission will recommend that the requirement that liens and encumbrances be of record to be taken into account in determining the size of the estate for purposes of summary distribution be eliminated.

(4) the Commission will recommend that the "other property" disqualification of the surviving spouse or child be increased from \$5,000 to \$12,500.

(5) the Commission will recommend that neither a declared or probate homestead shall be taken into account in determining the size of the decedent's estate for purposes of summary distribution but that such homesteads shall be taken into account in determining the size of the surviving spouse's estate for purposes of the \$12,500 "other property" disqualification.

The Commission considered Mr. Basye's study and recommended that a number of changes be made in it. Mr. Levit then made a motion which was seconded by Mr. Swan and unanimously passed that Mr. Basye's study be published as an appendix to the Commission's report to the Legislature, subject to the changes recommended by the Commission and to such further changes as might be agreed upon by Mr. Basye, the Executive Secretary, and the members of the Probate Code Study Committee.

The Commission considered whether it should, in addition to recommending the changes listed above, also recommend nonsubstantive changes in Sections 640-646 of the Probate Code to make them easier to understand and use. It was decided

that if this work can be done by the Executive Secretary and Mr. Basye prior to the meeting on December 17, it should be done; otherwise, not.

Agenda

The Executive Secretary reported that as of November 15, 1954 expenditures under the Agenda contract with Stanford University totalled \$1,628.67, leaving a balance as of that date of \$1,371.33 of the \$3,000 committed to the contract.

The Commission considered a number of suggestions received from members of the Bench and Bar and from the staff with respect to matters to be included on its agenda. The following action was taken with respect to the suggestions considered (except where otherwise indicated the suggestions are from outside sources and are so numbered):

Topics recommended for immediate study

- No. 9 -- Study to resolve the conflict between § 3051(a) of the Civil Code and § 425(b) of the Vehicle Code with respect to what procedure must be followed to make valid as to the holder of the legal title of a motor vehicle a mechanic's lien in excess of \$100 for work done on the vehicle at the request of any other person.
- No. 21(1)-48 -- Study to determine whether Section 19(a) of the Penal Code, which limits the maximum period of confinement in a county jail to one year, should be revised inasmuch as other statutes authorize such confinement for more than one year.

No. 52 -- Study to determine whether § 3901 of the Corporations Code should be amended to provide that when all or substantially all of the assets of a corporation are sold with the consent of a majority of the stockholders, all of the stockholders must be notified of the contemplated action.

No. 53 -- Study to determine whether the mechanics' lien law should be revised to permit an owner of property to put up a bond to relieve the property from the lien.

No. 65 -- Study to determine whether the rule provided in Penal Code § 1137, that the jury may take the jury instructions into the jury room, should be made applicable in civil actions.

Staff Suggestion No. 3 -- Study to determine whether § 442 of the Code of Civil Procedure should be amended to permit a defendant to bring in as a new party one who is not a necessary or indispensable party to the action.

Topics recommended for future study.

No. 34 -- Study to determine whether the rule, applied in cases involving the value of property, that evidence of other sales of proximate properties is not admissible during the case in chief but may be inquired into on cross examination of expert witnesses for the purpose of testing their opinions should be revised.

No. 66 -- Study of the California Arbitration Statute (CCP §§ 1280 to 1293) to determine whether it should be revised.

Postponed

Nos. 7 and 9 -- Suggestion that a study be made of the Uninhabited Territories Act to correct certain specific defects in the act and to determine whether it is in need of a general revision to clarify ambiguous sections, etc.

- No. 20 -- Suggestion that a study be made of § 293 of the Vehicle Code and § 1203.1 of the Penal Code to determine whether they are in conflict as to whether a driver's license may be suspended for more than one year in granting probation.
- No. 26(2) -- Suggestion that a study be made to determine whether an abutting land owner is liable for injuries due to defective sidewalks.
- No. 35 -- Suggestion that a study be made to determine whether, when a note is secured by both a deed of trust and a guarantee (1) the creditor may proceed against the guarantor without first exhausting the security and (2) the creditor may, after exhausting the security, recover a deficiency judgment against the guarantor if he would be unable to recover such a judgment against the principal debtor in a situation governed by § 580(b) or § 580(d) of the Code of Civil Procedure.
- No. 39 -- Suggestion that a study be made of the Civil Code sections relating to rescission of contracts to determine whether both existing methods of rescission are necessary.
- No. 54 -- Suggestion that a study be made to determine whether § 372 of the Code of Civil Procedure should be amended to provide that in a case where a guardian ad litem is appointed the court may determine and order paid his reasonable expenses.
- No. 58 -- Suggestion that a study be made to determine whether § 690 of the Code of Civil Procedure should be revised so far as it concerns exemptions from execution for farmers.

Not Accepted

- No. 28(2) -- Suggestion that § 45 of the Elections Code be amended to provide that the date of signing initiative and other petitions may be indicated by ditto marks in the case of successive signers.

No. 51 -- Suggestion that a study be made to determine whether the Judicial Council should be given power to adopt rules governing all procedures in the trial courts, such rules to supercede the comparable provisions of the Code of Civil Procedure.

No. 62 -- Suggestion that a study be made to determine whether § 1162 of the Fish and Game Code should be revised to make it unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments at any time or place.

The following action was also taken on Agenda matters:

(a) With respect to Outside Suggestion No. 55, relating to the time within which a notice of intention to move for a new trial may be filed and a motion for new trial may be made, the Executive Secretary was directed to make inquiry of the Judicial Council whether it would wish to take this matter up since it is closely related to the matter of appeal.

(b) With respect to the Outside Suggestion No. 57, that a study be made to determine whether something might be done to reduce the number of cases filed in the Superior Court where there is no reasonable prospect that damages in the amount of \$3,000 or more will be obtained, the Executive Secretary was directed to forward this suggestion to the Judicial Council.

(c) Outside Suggestion No. 26(1), relating to the liability of cities for injuries due to defective sidewalks, was consolidated with the Commission's proposed study of governmental immunity.

(d) Outside Suggestion No. 59, relating to two matters concerning appeals from small claims judgments, was consolidated with the Commission's proposed study of small claims procedure.

(e) Outside Suggestion No. 61, that counsel should be appointed by the court to represent the respondent in a proceeding for commitment for mental illness when such person cannot afford counsel, was consolidated with the Commission's proposed study of commitment procedures for mentally ill persons.

The Executive Secretary reported that he had received a copy of a letter written by Judge Murray Draper of San Mateo County to the Department of Mental Hygiene suggesting that a change be made at the next session of the Legislature in the statute governing commitment of sexual psychopaths. The Executive Secretary reported that he had received also a letter from Mr. Leigh Deming, Administrative Advisor to the Department of Mental Hygiene, acknowledging receipt of Judge Draper's letter and suggesting that the Department would be willing to go along with Judge Draper's suggestion and asking whether the Law Revision Commission would handle the matter. The Executive Secretary reported that he had written to Mr. Deming, with a copy to Judge Draper, stating that he believed that the Commission's position would be that it could not propose legislation with respect to commitment of mentally ill persons at the forthcoming session of the Legislature. The Commission approved the action taken by the Executive Secretary.

The Commission considered a letter received by the Chairman from Assemblyman Don Hobbie, Chairman of the Assembly

Interim Committee on Transportation and Commerce, stating the belief of Mr. Hobbie and his Committee that the Vehicle Code should be revised and inquiring whether the Commission could undertake an assignment to do so. It was agreed that the Commission could not undertake so substantial a task as revision of the Vehicle Code if it is also to be engaged during the next two years in further revision of the Education Code. The Chairman was directed to contact Mr. Hobbie and explain the Commission's position to him.

The Commission considered a communication from Mr. Norris Burke, Chief Research Attorney for the Judicial Council, stating that he believed that the problem of advancement of cases for trial, placed in the category of topics selected for immediate study at the October meeting, would be appropriate for action by the Council. The Commission decided to put this item in the category of topics selected for future study in order to give the Council an opportunity to act upon it first if it wishes to do so.

The Commission's First Report

The Commission considered a second draft of its first report to the Legislature prepared by the Executive Secretary. The Commission determined that Appendix B, consisting of the revisers' notes for its proposed revisions of the Education Code should not be made a part of the report due to the

expense involved but should be distributed to interested persons in mimeographed form. The Commission made a number of suggestions for changes in and additions to particular parts of the report. The Commission also directed the Executive Secretary to include in the final draft of the report the following recommendations:

(1) that the Legislature authorize the Commission to study those topics listed in Appendix A of its report as topics selected for immediate study;

(2) that the Legislature enact into law the proposed revisions of the Education Code prepared and recommended pursuant to Chapter 1682 of the Statutes of 1953;

(3) that the Legislature enact into law the proposed revisions of the Probate Code prepared and recommended pursuant to Assembly Concurrent Resolution No. 8 adopted in the 1954 session of the Legislature; and

(4) that the Legislature repeal those statutes reported by the Commission to have been held unconstitutional or repealed by implication by the Supreme Court of the State of California or the United States Supreme Court.

Respectfully submitted,


John R. McDonough, Jr.
Executive Secretary