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LEGISLATIVE COUNSEL

STATE OF CALIFORNIA

California Law Revision Commission

January 12, 1955

MINUTES OF MEETING

OF

DECEMBER 17 AND 18, 1954

Pursuant to the call of the Chairman, the Law Revision Commission met on December 17 and 18 at Bakersfield, California.

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 (December 18)

Mr. Samuel D. Thurman

Mr. Ralph N. Kleps, ex officio

Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was present.

The minutes of the meeting of the Commission on November 26 and 27, 1954, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

The Secretary reported that the Department of Finance has agreed to the establishment of a temporary position of Assistant Executive Secretary for the period January 1 to June 30, 1955. The position will start as that of a Student Legal Assistant at a salary of \$250 a month and will be upgraded to a position of Junior Counsel at a salary of \$358 a month on or about February 1, 1955 when the list of successful applicants for the Junior Counsel civil service examination given in November 1954 becomes available.

The Chairman reported that the President of the State Bar has appointed a Committee to Cooperate with the Law Revision Commission. Its members are John J. Goldberg, Esq., Chairman, Gerald Hager, Esq. and Ben Duniway, Esq.

The Chairman reported that he had received a letter from Mr. Mugford of the Department of Finance stating that the Department continues in the belief that the position of the Executive Secretary of the Commission is now properly classified when considered in connection with other State positions. After this matter was discussed, it was decided that the Chairman would write Mr. Mugford a letter indicating that the Commission does not accept the Department's view and that the Commission will reopen the matter at an appropriate time.

The Commission discussed who should introduce its bills in the Legislature. It was decided that Assemblyman Ernest R. Geddes would be invited to introduce the Commission's Education Code bills and that Assemblyman S. C. Masterson would be invited to introduce the Commission's bill to revise Probate Code Sections 640 to 646. Senator Dorsey agreed to introduce a concurrent resolution authorizing the Commission to study the

topics included in its first report as topics selected for immediate study.

The Commission discussed the steps which it might appropriately take in connection with the appointment of a new Assembly member of the Commission in view of the fact that Honorable Stanford C. Shaw's term of office expires on December 31, 1954. After discussion it was agreed that when the new speaker of the Assembly has been selected, Chairman Stanton and Vice Chairman Babbage will call on him to ask him to appoint a member to the Commission as soon as possible.

Report to the Legislature

The Commission considered the final draft of its first report to the Legislature which had been prepared by the Executive Secretary and sent to the members of the Commission prior to the meeting. A number of suggestions for changes in the report were discussed. Mr. Fildew made a motion which was seconded by Mr. Levit and unanimously passed that the Chairman and the Executive Secretary be appointed a committee to put the draft in final form and to send it to the printer. It was agreed that 2,000 copies of the report should be printed.

Summary Probate Study

The Commission considered the Report and Recommendation to the Legislature Relating to Summary Distribution of Small

Estates under Sections 640 to 646 of the Probate Code drafted by the Executive Secretary. A number of suggestions for changes were discussed. The Executive Secretary reported that Mr. Basye's study had been put in final form and copies of it had been sent to the Chairman and to the members of the Probate Code Committee. He stated that copies of the final draft of Mr. Basye's report had not been sent to the other members of the Commission because the report had been approved at the last meeting subject to such changes as might be made by Mr. Basye with the approval of the Committee and the Executive Secretary.

The Commission then considered the proposed revisions of Sections 640 to 646 of the Probate Code which had been sent to the members by the Executive Secretary prior to the meeting. The Executive Secretary reported that the proposed revisions incorporated the substantive changes recommended by the Commission but made no change in form in Sections 640 to 646. The Executive Secretary reported that Mr. Basye had prepared a revision of Sections 640 to 646 designed to change them in form as well as in substance, that he and Mrs. Nordby had spent considerable time going over Mr. Basye's draft and making changes in it, and that he had concluded that there was not sufficient time to prepare a revision in form of Sections 640 to 646 which the Commission could recommend to the Legislature with confidence that all of the problems involved in making such a revision had been discovered and adequately handled. The Executive Secretary recommended that the Commission not make any change in the form of Sections 640 to 646 and that it confine its

proposed revisions to those necessary to give effect to its substantive recommendations.

Mr. Levit stated that he did not agree with the Executive Secretary and that he had drafted revisions of some of Sections 640 to 646 which he wished the Commission to consider. After the matter was discussed at some length, Mr. Levit's proposed revisions were referred to the Summary Probate Study Committee, consisting of Mr. Thurman and Mr. Levit with the request that the Committee report back on the next day to the Commission. On the next day Mr. Thurman reported for the Committee that the revisions proposed by Mr. Levit, while not perhaps covering all of the ground which might be covered, were nevertheless an improvement over the language of the present sections and stopped at a logical stopping place. The Executive Secretary restated his reservations with regard to the desirability of recommending the proposed revisions in the form of Sections 640 and 641. After the matter was thoroughly discussed the Commission unanimously approved the draft of §§ 640, 641, 642, 643 and 644 of the Probate Code recommended by the Committee.

Senator Dorsey stated that he had reservations as to the desirability of amending Section 640 to eliminate the requirement that liens and encumbrances must be of record in order to be excluded from the value of the estate for purposes of summary distribution, and that he reserved the right to oppose this feature of the proposed revision.

Education Code

The Secretary reported that the Department of Finance has approved an arrangement for a contract between Stanford University and the Commission for additional Education Code work for the period January 1 to March 31, 1955, the work to be financed from the general research funds of the Commission.

Chairman Stanton suggested that the Commission consider whether certain changes should be made in the section of the Commission's report to the Legislature relating to revision of the Education Code. He made two recommendations: (1) that the Commission report to the Legislature that while preliminary drafts of its proposed revisions of the Education Code have been circulated to a number of educators and legal officers in California, there has not been time to circulate the more recent and revised drafts proposed by the Commission and that the Commission's Education Code bills will be preprinted and circulated to a large number of educators and legal officers early in January so that there will be time for their reactions to be made known before the Legislature considers the bills; (2) that the Commission report to the Legislature that the job of revising the Education Code is so large and complex that it cannot be done by the Commission along with its regular work and that the Commission recommend that the Legislature consider having further Education Code revision work done by an interim committee or interim committees which could assemble a staff, hold hearings, and make recommendations beyond the scope of those which could properly be made by the Commission.

The Commission then discussed at length whether and how it should continue to work on revision of the Education Code. It was generally agreed that the Education Code revision work cannot be carried on in the way in which the Commission has decided that it will operate in connection with the projects on its regular agenda -- i.e., that the Commission members assume substantial personal responsibility for carefully studying each proposed revision and approving it both as to substance and form. Some of the Commissioners expressed the view that the Commission should not attempt to revise the Education Code in this way but should supervise the work of the staff in a more general way and should consider and decide matters of general policy rather than matters of detail. On the other hand, the view was expressed that the Commission should not do any job that it cannot do in such a way that the individual commissioners can take substantial personal responsibility for the substance and form of the Commission's reports and recommendations.

Mr. Shaw suggested that the Commission report to the Legislature the fact that it cannot carry out the Education Code revision work in the ordinary pattern of the Commission's work and make two alternative recommendations to the Legislature as to how the work might be done in the future: (1) that the Commission establish a special staff to revise the Education Code, to be located at Sacramento and to be headed by a full-time director, to include both lawyers and educators, and to be supervised by a committee of the Commission; or (2) that the

work be done by an interim committee or interim committees of the Legislature along the lines suggested by the Chairman.

After these matters were discussed it was decided:

1. The Commission will report to the Legislature that it has been working continuously to the date of the report on revising its proposed revisions of the Code and has not had time to circulate them but that it will circulate preprinted bills for comment.

2. The Commission's proposed revision of the Education Code will be put into two bills, one revising the sections of the Code relating to election, appointment, and recall of governing board members and the other revising other sections of the Code to eliminate obsolete sections, clarify ambiguous sections, etc.

3. The bills will be introduced in the Legislature and will be recommended by the Commission for enactment but will not be pressed. The Commission will, rather, take the position that these bills demonstrate the kind of defects which the Commission has found in the Code and the way in which it had gone about eliminating such defects and that they represent a sample of the Commission's work which might be enacted now or might be deferred for enactment at a later time.

4. The Commission will report to the Legislature that the work done to date merely scratches the surface so far as revision of the Education Code is concerned and that the Commission is unable to say how long it would take or how much it would cost to complete revision of the Code.

5. The alternatives suggested by Mr. Shaw for continuing work on the Education Code will be reported to the Legislature and the Commission will report that it estimates that if it is to do the work through a special staff in Sacramento, it would cost approximately \$65,000 a year in addition to the Commission's regular budget.

6. The Education Code revision committee of the California Association of School Administrators, Assemblyman Ernest R. Geddes, and Mr. Mugford of the Department of Finance will be informed of the action taken by the Commission with respect to future revision of the Education Code.

The Commission considered and approved for recommendation to the Legislature the proposed revisions of the Education Code relating to election, appointment and recall of governing board members.

The Commission considered and approved for recommendation to the Legislature certain proposed revisions of other provisions of the Code recommended to the Commission by Education Code Committee No. 1.

Agenda

The Secretary was directed to write to Assemblyman Pat McGee telling him about the Commission's projected study of the problem of obtaining counsel fees and costs in a default divorce or annulment case without an order to show cause or notice of motion so that Assemblyman McGee can introduce

a bill to take care of this matter in the forthcoming session if he desires to do so.

The Commission discussed what might be done with respect to worthwhile suggestions for revision of the law which are made to the Commission but are not placed on its Calendar because no extended study of them is required. At Mr. Kleps suggestion it was agreed that such suggestions will be referred to an Assembly or Senate interim committee for such action as it may deem appropriate. The Commission will report to the Committee that it will be happy to refer other such matters to the committee in the future if the committee wishes it to do so.

Respectfully submitted,



John R. McDonough, Jr.
Executive Secretary

JRM:fp