

AGENDA

-for-

Meeting of California Law Revision Commission

-at-

Los Angeles

-on-

January 24-25, 1958

1. Minutes of meeting of December 27-28, 1957 (to be sent).
2. Miscellaneous reports by Executive Secretary:
 - a) Addressograph arrangement.
 - b) Distribution bound volumes.
 - c) Current status of Arbitration study.
 - d) Current status of Habeas Corpus study.
 - e) Current status of study of Attachment, Garnishment, etc.
 - f) Proposed announcement to appear in State Bar Journal
3. Discussion of per diem payments for meetings at which less than a quorum is present (See materials enclosed).
4. Discussion of Legislative Counsel's letter on statutes held unconstitutional (material enclosed).
5. Study No. 25 - Probate Code Section 259, et seq. (See Memorandum No. 1 enclosed).
6. Study No. 34(L) - Uniform Rules of Evidence (See Memorandum No. 2 enclosed).
7. Study No. 37(L) - Claims Statutes (See Memorandum No. 3 enclosed).
8. Study No. 56(L) - Narcotics Code: Report by Executive Secretary based on material submitted by Legislative Counsel.

MINUTES OF MEETING
of

JANUARY 24 and 25, 1958

Los Angeles

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on January 24 and 25, 1958, at Los Angeles.

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman
Honorable Clark L. Bradley
Honorable James A. Cobey
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Mr. Stanford C. Shaw
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

ABSENT: Mr. John D. Babbage, Vice Chairman
Mr. Bert W. Levit

Mr. John R. McDonough, Jr., the Executive Secretary, and Miss Louisa R. Lindow, the Assistant Executive Secretary, were also present.

Professor James H. Chadbourn of the School of Law, University of California at Los Angeles, the research consultant of Study No. 34(L), was present during a part of the meeting on January 24, 1958, and Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles, the

research consultant of Study No. 37(L), was present during a part of the meeting on January 25, 1958.

The minutes of the meeting of December 27 and 28, 1957, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

Minutes - Regular Meeting
January 25-25, 1958

I. ADMINISTRATION

A. Addressograph Arrangement: The Executive Secretary reported that the establishment of an addressograph mailing list was underway; that the contract for the work had been signed; that the mailing list consisted of approximately 570 names in eleven categories; and that upon completion of the list the Commission in compliance with Government Code §13668 will send out self-addressed post cards requesting confirmation of the accuracy of name and address, and of the addressee's interest in remaining on the Commission's mailing list.

B. Distribution of Bound Volumes: The Executive Secretary reported that to date 204 bound volumes had been distributed to Members of the Legislature who had requested the bound volume, to the present and past Members of the Commission, to the present Members of the New York Law Revision Commission, to all the California law school and county law libraries, to the book publishers, West, Bancroft-Whitney and Shepard, to the California law school law reviews; and to the Governor, the Attorney General, the Legislative Counsel, the Judicial Council, the Supreme Court of the United States, and the Supreme Court of California.

C. Proposed Announcement of Studies in State Bar

Journal: The Commission considered (1) two forms of announcement distributed at the meeting which had been prepared by the Executive Secretary (copies of which are attached to these Minutes) and were closely modelled on a draft prepared by Mr. Gustafson, and (2) the report of the Executive Secretary of the correspondence with Mr. Jack Hayes of the State Bar relating to this matter. After the matter was discussed it was agreed to insert an announcement in the State Bar Journal listing the several topics under study by the Law Revision Commission. Mr. Bradley expressed opposition to this proposal. The Executive Secretary was directed to submit a report to the Commission in the fall of the results to these announcements.

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D. Per Diem Compensation: The Commission considered a letter from Mr. Ralph Kleps and an opinion relating to reimbursement for expenses incurred as a result of attendance at meetings where less than a quorum is present (copies of which are attached to these minutes). After the matter was discussed a motion was made by Mr. Bradley, seconded by Mr. Shaw, and unanimously adopted that a quorum ordinarily consists of a majority of the voting members but that the Chairman be authorized to determine that a lesser number constituted a quorum for purposes of a particular meeting. The Chairman was authorized to continue calling special meetings.

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E. Resolution Relative to Mrs. Virginia B. Nordby:

The Executive Secretary reported that Mr. H. G. Blake, Principal Claim Auditor of the Controller's Office had taken the position that there is no statutory authority which would permit payment of the expense incurred to obtain a "suitably engrossed" copy of the Commission's resolution relative to Mrs. Nordby. After the matter was discussed the Commissioners present contributed to a fund to be used to pay the State Printer for the copy which had been obtained and delivered to Mrs. Nordby.

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F. Miscellaneous Administrative Matters Reported:

Budget: The Executive Secretary reported on correspondence from Mr. Charles W. Johnson, Chief Deputy of the Legislative Counsel, which advised that there were no substantial unanticipated changes made in the Commission's 1958-59 budget as it appears in the Governor's budget.

1958 Report: The Executive Secretary reported that due to more pressing commitments in the State Printing Office the 1958 Report of the Law Revision Commission will not be published in time for the beginning 1958 Legislative session, but should be published in time to deliver to the Members upon their return from the recess.

Judicial Council: The Executive Secretary reported on the correspondence from Mr. J. D. Strauss which thanked the Commission for referring suggestion Nos. 74 and 210 to the office of the Judicial Council.

II. CURRENT STUDIES

A. Study No. 25 - Probate Code Sections 259-259.2:

The Commission considered Memorandum No. 1 (a copy of which is attached to these minutes), a draft prepared by the Staff of a recommendation of the California Law Revision Commission relating to the right of nonresident aliens to inherit and of legislation designed to effectuate the Commission's recommendation (a copy of which is attached to these minutes) and a letter from the research consultant, Professor Harold Horowitz, relating to the latter item (a copy of which is attached to these minutes). After the matter was discussed, the following changes in the impounding statute were agreed upon:

(a) Section 1045: The phrase "a present interest in" should be inserted in line 1 after the words "... claim to"; the word "also" should be inserted in line 11 after "May"; and in line 13 the word "by" should be changed to "to".

(b) Section 1049.5: After the Commission considered comment 5 in Professor Horowitz's letter it was agreed to revise Section 1049.5 to read "If a disqualified non-resident alien having an interest in all or any part of decedent's estate probated under the laws of this State or of a testamentary trust administered thereunder or having an interest in funds deposited pursuant to the pro-

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visions of this article assigns such interest, his assignee has only the rights given to the assignor by this article. No payment of funds may be made to an assignee who is a disqualified nonresident alien."

A motion was made by Mr. Bradley, seconded by Mr. Shaw, and unanimously adopted to make the changes agreed upon above and to refer the research consultant's study and the Commission's proposed recommendation and statute to the State Bar for its consideration.

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B. Study No. 31 - Doctrine of Worthier Title: The

Executive Secretary reported that copies of the Recommendation of the California Law Revision Commission Relating to the Doctrine of Worthier Title and the draft of legislation designed to effectuate the Commission's recommendation which was distributed at the meeting (a copy of which is attached to these minutes) had been mailed on January 22, 1958, to the State Bar for its consideration.

C. Study No. 34(L) - Uniform Rules of Evidence: The Commission considered and discussed the following items: A memorandum to the State Bar Committee to Consider the Uniform Rules of Evidence of Commission action relating to the Uniform Rules of Evidence prepared by the Executive Secretary (a copy of which is attached to these minutes); Correspondence of Mr. Joseph Ball of the Southern State Bar Committee to Consider the Uniform Rules of Evidence, the Agenda for the meeting of this Committee and the minutes of the Southern Committee to Consider the Uniform Rules of Evidence (copies of which are attached to these minutes); and the following memoranda which had been prepared by Professor James H. Chadbourn: Memorandum on Subdivision (6) of Rule 63; Memorandum on Subdivision (10) of Rule 63; Memorandum on Subdivision (11) of Rule 63; Memorandum on Subdivision (12) of Rule 63; Memorandum on Subdivisions (13) and (14) of Rule 63; Memorandum on Subdivisions (15) and (16) of Rule 63; Memorandum on Subdivision (17) of Rule 63; and Memorandum on Subdivisions (18) and (19) of Rule 63. The following action was taken:

1. It was agreed that the Executive Secretary would attend the meetings of the Southern State Bar Committee to consider the Uniform Rules of Evidence when invited if his time will permit.

2. Rule 63, Subdivision (2) - Affidavits and Depositions: A motion was made by Mr. Gustafson and seconded by Senator Cobey to amend Subdivision (2) to read "To the extent otherwise admissible

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by the statutes of this State." The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

It was agreed to delete the latter portion of Subdivision
(2) (b) so as to read, "(b) Depositions."

3. Rule 63, Subdivision (4) - Contemporaneous Statements and
Statements Admissible on Ground of Necessity Generally: A motion
was made by Mr. Shaw, seconded by Mr. Matthews, and unanimously
adopted to amend Subdivision (4)(c) by inserting after the initial
word "if" the following: "the judge finds that." In the course
of a discussion as to whether the same insertion should be made
elsewhere in the Rules when the judge is required to make a factual
determination as a predicate for admitting evidence, it was noted
that the Rules are not consistent in this matter. Professor Chad-
bourn pointed out that the insertion is apparently not necessary at
any point since Rule 8 provides for preliminary inquiry by the
judge as to the admissibility of such evidence. A motion was made
by Mr. Gustafson, seconded by Senator Cobey, and unanimously adopt-
ed that Professor Chadbourn be requested to submit a memorandum on
the question of how the various specific rules should be drafted
on this point in light of the general provision in Rule 8.

4. Rule 63, Subdivision (6) - Confessions: At Mr. Gustafson's request it was agreed to defer further consideration of Subdivision (6) until Mr. Gustafson has had an opportunity to submit a memorandum expressing his views on this subdivision.

5. Rule 63, Subdivision (10) - Declaration Against Interest: It was decided to add to Subdivision (10) after "statement" in line 2: "made by a declarant who is unavailable as a witness." After this was done a motion was made by Mr. Gustafson and seconded by Mr. Bradley to approve that portion of Subdivision (10) from the beginning to "another" as drafted. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton,
Thurman.

No : Shaw.

Not Present: Babbage, Levit.

The Commission next considered that portion of Subdivision (10) which makes admissible a declaration which would make the declarant an object of hatred, ridicule or social disapproval. Mr. Gustafson pointed out that the Utah State Bar Committee which studied the Rules recommended that this portion of Subdivision (10) be revised to require the application of a subjective rather than an objective test. A motion was made by Mr. Bradley and seconded by Senator Cobey to approve this portion of Subdivision (10) as drafted. The motion carried:

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Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

The Commission then considered that portion of Subdivision (10) which makes a declaration admissible only if a reasonable man in the declarant's position would not have made it unless he believed it to be true. A motion was made by Mr. Shaw and seconded by Senator Cobey to amend the rule to make the statements let in under Subdivision (10) inadmissible unless the declarant be shown to have had personal knowledge of the facts related in the declaration. The motion did not carry:

Aye: Cobey, Matthews, Shaw, Stanton.

No : Bradley, Gustafson, Thurman.

Not Present: Babbage, Levit.

Mr. Shaw was of the opinion that Subdivision (10) should be limited to civil cases.

6. Rule 63, Subdivision (11) - Voter's Statements: A motion was made by Mr. Bradley and seconded by Mr. Shaw that the Commission not recommend the enactment of Subdivision (11). The motion carried:

Aye: Bradley, Gustafson, Matthews, Shaw, Thurman.

No : Cobey, Stanton.

Not Present: Babbage, Levit.

7. Rule 63, Subdivision (12) (a) and (b) - Statements of Physical or Mental Condition of Declarant: A motion was made by Mr. Matthews and seconded by Mr. Thurman to recommend the enactment of Subdivision (12) (a). The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

A motion was made by Mr. Shaw and seconded by Mr. Matthews to recommend the enactment of Subdivision (12) (b). The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No: None.

Not Present: Babbage, Levit.

8. Rule 63, Subdivision (13) - Business Entries and the Like: A motion was made by Mr. Bradley and seconded by Senator Cobey to recommend the enactment of Subdivision (13). The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

9. Rule 63, Subdivision (14) - Absence of Entry in Business Records: The Commission considered the recommendation made by

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Professor Chadbourn to amend Subdivision (14) by adding at the end "and that the memoranda and the records of the business were prepared from such sources of information and by such methods as to indicate their trustworthiness." A motion was made by Senator Cobey and seconded by Mr. Gustafson to recommend the enactment of Subdivision (14) with the recommended amendment. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

10. Rule 63 Subdivision (15) (a), (b) and (c) - Reports and Findings of Public Officials: The Commission considered Subdivision (15) (a) and (b) and Section 1920 of the Code of Civil Procedure. Mr. Gustafson was of the opinion that Subdivision (15) should be limited to cases in which the person making the entry was under a statutory duty to do so. A motion was made by Mr. Bradley and seconded by Mr. Shaw to not approve Subdivision (15) as drafted but to approve a redraft of Subdivision (15) which would embody the substance of Section 1920 of the Code of Civil Procedure. The motion did not carry:

Aye: Bradley, Gustafson, Matthews, Shaw.

No : Cobey, Stanton.

Pass: Thurman.

Not Present: Babbage, Levit.

11. Rule 63, Subdivision (16) Filed Reports, Made by Persons Exclusively Authorized: After the Commission discussed Subdivision (16) a motion was made by Mr. Gustafson, seconded by Mr. Shaw, and approved that, in view of the action taken by the Commission on Subdivision (15), consideration of Subdivisions (16) should be deferred to the next meeting. Mr. Stanton expressed opposition. The Staff was directed to redraft Subdivisions (15) and (16) to embody the substance of Section 1920 of the Code of Civil Procedure and submit the redrafts to the Commission for its consideration at its next meeting.

12. Rule 63, Subdivision (17) (a) and (b) - Content of Official Record: A motion was made by Senator Cobey and seconded by Mr. Thurman to recommend the enactment of Subdivision (17) (a). The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

A motion was made by Senator Cobey and seconded by Mr. Gustafson to recommend the enactment of Subdivision (17) (b). The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

13. Rule 68 - Authentication of Copies of Records: The Commission considered the recommendation made by Professor Chadbourn to amend Rule 68 Subsection (c) by adding "or is an office of the United States government whether within or without this State" after the word "state", and to amend Subsection (d) by adding "or is not an office of the United States government" after the word "State". A motion was made by Senator Cobey and seconded by Mr. Thurman to recommend the enactment of Rule 68 with the recommended amendments. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Shaw,
Stanton, Thurman.

No : None.

Not Present: Babbage, Levit.

14. Rule 69 - Certificate of Lack of Record: After the Commission considered Rule 69 it was agreed to defer further consideration of this Rule until Professor Chadbourn has submitted a re-draft which will clarify the ambiguous portions of this rule.

15. Rule 63, Subdivision (18) - Certificate of Marriage: A motion was made by Mr. Shaw and seconded by Mr. Gustafson to recommend the enactment of Subdivision (18). The motion carried:

Aye: Bradley, Gustafson, Shaw, Stanton, Thurman.

No : Cobey, Matthews.

Not Present: Babbage, Levit.

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16. Rule 63, Subdivision (19) - Records of Documents Affecting an Interest in Property: A motion was made by Mr. Shaw and seconded by Mr. Thurman to recommend the enactment of Subdivision (19). The motion carried:

Aye: Bradley, Gustafson, Matthews, Shaw, Stanton,
Thurman.

No : Cobey.

Not Present: Babbage, Levit.

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D. Study No. 37(L) - Claims Statute: The Commission considered the proposed draft of a constitutional amendment and the revised draft of legislation prepared by the Staff on this subject (copies of which are attached to these minutes). After the matter was discussed the following action was taken:

Constitutional Amendment: A motion was made by Mr. Gustafson and seconded by Mr. Matthews to delete the word "exclusive" from Section 38 of the constitutional amendment. The motion carried:

Aye: Bradley, Gustafson, Matthews, Stanton,
Thurman.

No: Shaw.

Not Present: Babbage, Cobey, Levit.

A motion was made by Mr. Shaw and seconded by Mr. Matthews to insert the word "plenary" before the word "power" in Section 38 of the constitutional amendment. The motion did not carry:

Aye: Bradley, Matthews, Shaw, Stanton.

No : Gustafson, Thurman.

Not Present: Babbage, Cobey, Levit.

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Statute: Mr. Kleps raised a question as to the Commission's decision to place the proposed claim statute in Chapter 12 of the Government Code, stating that he believes that a more suitable location for the statute would be between Chapters 5 and 6. It was agreed to defer further consideration of this matter until the Staff and research consultant have given further consideration to the location of these statutes.

The following changes in the revised draft of the claim statute were agreed upon:

(a) Section 7000(b): This section should be revised to read, "Claims in connection with which stop notices may be filed under statutes relating to mechanics' and materialmen's liens."

(b) Section 7001: The word "means" should be deleted and the word "includes" should be inserted; the phrase "but does not include the State" should be added at the end of this section.

(c) Section 7002: This section should be revised to read, "A claim presented on or before June 30, 1964, in substantial compliance with the requirements of any other applicable claims procedure established by or pursuant to statute, charter or ordinance in existence immediately prior to date of this chapter shall be regarded as having been presented in compliance with the terms of this chapter."

(d) Section 7004: This section should be revised to read, "Except as provided in this chapter no suit may be brought for money or damages against a public entity until a written claim therefor has been presented to the public entity in conformity with the provisions of this chapter and has been rejected in whole or in part."

(e) Section 7005: This section should be revised, "A claim shall be presented by the claimant or by a person acting on his behalf and shall show the name and residence or business address of the claimant and shall contain a general statement of the following:

(a) The circumstances giving rise to the claim asserted.

(b) The nature and the extent of the injury or damage incurred.

(c) The amount claimed."

(f) It was agreed that throughout all the sections the words "file" and "filed" should be deleted and the words "present" and "presented" should be inserted.

The following action was taken on the subsequent sections:

(a) Section 7007: The Commission considered whether the latter portion of Section 7007(1) should be deleted. A motion was made by Mr. Bradley and seconded by Mr. Gustafson to strike the latter portion of Section 7007(1)

beginning with "within the meaning..." The motion did not carry:

Aye: Bradley, Gustafson, Matthews, Thurman.

No : Shaw, Stanton.

Not Present: Babbage, Cobey, Levit.

A motion was made by Mr. Bradley and seconded by Mr. Gustafson to delete the word "only" which prefaces Subsection (1) and to delete "or to a member of the governing body." The motion carried:

Aye: Bradley, Gustafson, Matthews, Stanton, Thurman.

No : Shaw.

Not Present: Babbage, Cobey, Levit.

A motion was made by Mr. Gustafson and seconded by Mr. Shaw to change the ninety day limitation to a hundred day limitation. The motion carried:

Aye: Bradley, Gustafson, Matthews, Shaw, Stanton,
Thurman.

No : None.

Not Present: Babbage, Cobey, Levit.

The Commission then considered Subsection (2). A motion was made by Mr. Gustafson and seconded by Mr. Thurman to approve the first sentence of Subdivision (2) as drafted. The motion carried:

Aye: Bradley, Gustafson, Matthews, Shaw, Stanton,
Thurman.

No : None.

Not Present: Babbage, Cobey, Levit.

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A motion was made by Mr. Matthews and seconded by Mr. Thurman to approve the second sentence of Subdivision (2) as revised to read "A claim shall be deemed to have been presented in compliance with this section if it is actually received by the clerk, secretary, or governing body within the time prescribed." The motion carried:

Aye: Gustafson, Matthews, Shaw, Stanton, Thurman.

No : None.

Not Present: Babbage, Bradley, Cobey, Levit.

[As a result of this action and other minor changes Section 7007 had been revised to read: "A claim may be presented to a public entity (1) by delivering the claim personally to the clerk or secretary thereof not later than the hundredth day after the cause of action to which the claim relates has accrued within the meaning of the statute of limitations which would have been applicable to such a cause of action if the action had been brought against a defendant other than a public entity or (2) by sending the claim to such clerk or secretary or to the governing body at its principal office by mail post-marked not later than such hundredth day. A claim shall be deemed to have been presented in compliance with this section if it is actually received by the clerk, secretary, or governing body within the time prescribed."]

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revised. The motion carried:

Aye: Bradley, Gustafson, Shaw, Stanton, Thurman.

No : None.

Not Present: Babbage, Cobey, Levit, Matthews.

(d) Section 7010: The Commission agreed that the following changes should be made in this section: delete from line 2 the words "for ninety" and insert in their stead "within eighty"; delete from lines 2 and 3 the phrase "... received by a person designated in Section 7007", and insert "presented"; in lines 4 and 5 change the word "ninetieth" to "eightieth". A motion was made by Mr. Gustafson and seconded by Mr. Shaw to approve Section 7010 as revised. The motion carried:

Aye: Bradley, Gustafson, Shaw, Stanton, Thurman.

No : None.

Not Present: Babbage, Cobey, Levit, Matthews.

(e) Section 7012: The Commission considered Mr. Kleps' suggestion that since Section 2 of the proposed bill is a rule of construction it should be made a separate section. It was agreed that Section 2 should be codified as a separate section and inserted following Section 7000.

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E. Study No. 56(L) Narcotics Code: The Commission considered the correspondence between the Executive Secretary and the Legislative Counsel when the Commission entered into a contract with the Legislative Counsel for work relating to this study (a copy of which is attached to these minutes). Mr. Kleps reported that it is his opinion a separate code for narcotics laws is not desirable. After the matter was discussed it was agreed that Mr. Kleps would submit his report and recommendation for consideration of the Commission at its March meeting. The Commission directed the Staff to also submit a memorandum at that time relating to what, if anything, further should be done on this study.

AGENDA ITEM NO. 2 (a)

January 21, 1958

Status - Addressograph program.

1. Contract for work signed, January 14, 1958, open-end contract up to \$100.00.
2. Plates in process of being set up - two to three weeks before completion. Automatic list consists of 570 names. (Optional list not being set in plates.)
3. Automatic list consists of eleven categories.

Category -

1. Members of Assembly.
 2. Members of Senate.
 3. Members of Supreme Court, Superior Court, District Court, etc.
 4. Heads of State Dept.
 5. D.A.'s., County Counselor.
 6. Board of Governors, State Bar.
 7. Attorneys at Law - miscellaneous.
 8. Deans and Professors of California Law Schools.
 9. All California Law Libraries.
 10. Out of State Law Libraries and agencies.
 11. Law Reviews, legislative papers and book publishers.
4. List of names on automatic list:
- (a) Categories 1, 2, 4, 6, 9 and 11 automatically placed on list because of dept. or agency.
 - (b) Others placed on automatic mailing list - showed an interest in LRC material and requested either to be placed on mailing list or requested all material of LRC in response to circular letter sent out by LRC.

- Agenda
Item No. 2
LRL

Agenda Item No. 2 (a)

5. In conformance to Government Code § 13668, intend to send out self-addressed post card requesting confirmation of continued interest to be kept on mailing list and accuracy of name and address.

LRL

AGENDA ITEM 2 (b)

January 21, 1958

Status Distribution of bound volumes.

500 Bound Volumes received

204 To date distributed

296 Remaining.

Volumes distributed to:

Present and past members of LRC and present members of N.Y. LRC.

Members of Senate and Assembly that requested volume in response to letter sent by LRD.

SUP CTs
DCAs

All California ^{Law} School and County Libraries.

Book publishers (West, Bancroft-Whitney and Shepard).

California Law School Law Reviews.

Individual copies to U. S. Supreme Court, Governor Knight, Attorney General Brown,

State Bar, Jud Council

By direction of the California Legislature

THE CALIFORNIA LAW REVISION COMMISSION

is now making a study of the law of
ATTACHMENT, GARNISHMENT AND EXECUTION.

Members of the Bar who have comments on defects
in the present law or suggestions as to what
the statutes should contain are invited to send
them to the Commission, at the following address:

California Law Revision Commission
School of Law
Stanford, California

By direction of the California Legislature

THE CALIFORNIA LAW REVISION COMMISSION

is now making a study of the topics listed below.

Members of the Bench and Bar who have comments on
defects in the present law or suggestions as to
what the statutory law of the State should contain
on these subjects are invited to communicate with
the Commission. Communications may be addressed to:

California Law Revision Commission, School of Law,
Stanford, California.

1. Whether the law respecting mortgages to secure future advances should be revised.
2. Whether the doctrine of worthier title should be abolished.
3. Etc.

Hq ... #3

1/6/57

State of California
CALIFORNIA LAW REVISION COMMISSION

Sacramento, California
January 3, 1958

Prof. John R. McDonough
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

Yesterday I sent you a copy of a recent opinion of the Attorney General which relates to the collection of per diem compensation by members of state boards and commissions. As you probably noted, there is a reference in the last portion of the opinion to an early opinion of the Attorney General which concluded that no per diem compensation could be paid the members of such a board or commission if less than a quorum of members attended the meeting. Upon a quick check, I discover that we came to about the same conclusion in a letter addressed to you on June 9, 1954, relying upon 7 Ops. A.G. 325,329.

This seriously affects the special meetings of the Law Revision Commission at which less than a quorum may be present. The rule seems very restrictive since it means that every member attending a regularly called meeting would run the risk of being unable to collect his per diem compensation if less than a quorum actually attends. I am not sure whether the Attorney General would adhere to this position if it were raised specifically, and you may want to consider asking for an informal, letter opinion on the subject. In the absence of some such protection, the members should have in mind the possibility that a per diem compensation claim may be rejected by the Controller if the point is raised where less than a quorum is actually present at the meeting.

Regards,

/s/ Ralph

Ralph N. Kleps
Ex Officio Member

RNK:r

1/6/58

OFFICE OF THE ATTORNEY GENERAL
State of California

EDMUND G. BROWN
Attorney General

OPINION	:	No. 57/79
	:	
of	:	
	:	
EDMUND G. BROWN,	:	
Attorney General;	:	
Adolphus Moskowitz	:	
Deputy Attorney General	:	
	:	

THE GOVERNOR'S ADVISORY COUNCIL ON THE DEPARTMENT OF EMPLOYMENT
has requested our opinion on the following question:

May individual members or members of a subcommittee of the
Governor's Advisory Council on the Department of Employment be
reimbursed for expenses incurred as a result of attendance or
participation as officially designated representatives of the Council
at meetings with officials of the Department of Employment or with
public or private groups for the purpose of discussing problems
relating to the administration of the State's unemployment compensation
program?

Our conclusions may be summarized as follows:

Members of the Governor's Advisory Council on the Department
of Employment are authorized to be reimbursed for necessary expenses
incurred by reason of attendance at meetings of the Council. Meetings
attended by only one member or a subcommittee of the Council cannot
be regarded as meetings of the Council, and hence, there is no
authority to reimburse those members attending for their expenses.
On the other hand, when a meeting of the Council as such is called
to discuss problems relating to the administration of the State's
unemployment compensation program, those members of the Council who
attend are entitled to be reimbursed for their expenses irrespective
of the fact that at such meetings problems are discussed with
officers of the Department of Employment or with public or private
groups rather than by the members of the Council alone.

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ANALYSIS

Section 355 of the Unemployment Insurance Code authorizes the appointment and defines the functions and perquisites of the Governor's Advisory Council on the Department of Employment. It provides in part as follows:

"The Governor shall appoint a State Advisory Council composed of seven members to act only in an advisory capacity for the purpose of discussing problems relating to the administration of this division and of making recommendations in regard thereto to the director but no action taken by the Advisory Council shall limit or control the discretion vested by law in the director. . . . Members of the council shall not receive any compensation but shall be reimbursed for any necessary expenses incurred by reason of the attendance at meetings of the council"

The key words in this section, insofar as this opinion is concerned, are that members are entitled to reimbursement for necessary expenses incurred by reason of attendance at "meetings of the council". The question is whether a meeting attended by one member or a subcommittee of the Council can properly be regarded as a meeting of "the Council", keeping in mind the rule that statutes granting fees and expenses to public officials are strictly construed in favor of the State (County of Marin v. Messner (1941), 44 Cal.App. 2d 577, 585; 7 Ops.Cal.Atty. Gen. 325, 327-328).

It is obvious from a perusal of other statutes relating to reimbursable expenses of State boards and commissions that the Legislature has experienced no difficulty in finding adequate language to express a desire that members be paid their expenses for more than merely attendance at meetings of the board or commission. Typically these statutes provide that each member shall receive his actual necessary expenses "while on official business" of the board or commission (e.g. State Water Pollution Control Board, Water Code sec. 13044; California District Securities Commission, Water Code sec. 20017) or "incurred in the performance of his (or their) duties" (e.g. California Water Commission, Water Code sec. 157; State Board of Forestry and State Park Commission, Pub. Res. Code sec. 510; Fish and Game Commission, F. & G. Code sec. 11). If such language had been employed here there would have been less difficulty in approving the expenses involved in this opinion request (Ops.Cal.Atty. Gen. NS 4441, August 12, 1942). Without going so far as the statutes summarized above, the Legislature has in other cases indicated its intent that expenses incurred in attending meetings not involving the board or commission as such should also be reimbursable. For example, a statute providing that members of the California Disaster Council's citizens' advisory committees were entitled to reimbursement for expenses incurred "when called into conference or session by the Governor or a department head designated by him" was held sufficient

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to authorize reimbursement for the expense of attending meetings of subcommittees of such committees (7 Ops.Cal.Atty.Gen. 325, 328-329 (1946)).

On the other hand, the opinions of this office have been consistent in holding that when the statute speaks of meetings of the particular board or commission, that description does not include official conferences attended by one member or a subcommittee of such body, or any other type of official activity by a member.

In 7 Ops.Cal.Atty.Gen. 79 (1946), the applicable statute provided in part that:

"Each member of the board . . . shall receive twenty dollars (\$20) for each day of his actual attendance at meetings of the [Industrial Safety] Board. . . ."

The question was whether this language authorized payment of such per diem for attendance at safety order hearings where:

". . . one or more members of the board, under general or special instructions from the board, attend or conduct such hearings and report back to the board at a subsequent meeting" (7 Ops.Cal.Atty.Gen. at 80).

It was concluded that:

"Under these circumstances a board meeting has not taken place and the attending member or members are not entitled to the per diem mentioned in Section 141 of the Labor Code. However, if all the formalities of calling and carrying on of a board meeting are had, there has been a meeting of the board, and the attending members are entitled to the statutory per diem" (7 Ops.Cal.Atty.Gen. at 80-81).

In 2 Ops.Cal.Atty.Gen. 2 (1943), it was held that a statute providing for "a per diem of \$25 per day, for not to exceed 10 days in any month, for attendance upon meetings of the [Youth Correction] Authority" permitted payment for days actually and necessarily spent in traveling to and from meetings of the Authority, but not for time spent by the members in preparing for such meetings.

In Attorney General's Opinion No. 3115, dated March 6, 1916, the statute in question provided in part that:

"Each member of the [reclamation] board shall receive the necessary expenses incurred by him in the performance of his duties, and twenty dollars for each day attending the meetings of the board. . . ."

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Under this provision, it was held that Board members were not entitled to either expenses or per diem for attending meetings where fewer members than the quorum necessary to transact were present, on the ground that such an assembling did not constitute a meeting "of the board".

It is our conclusion, therefore, that members of the Governor's Advisory Committee on the Department of Employment may receive expenses only for attendance at meetings which are called as meetings of the Council as such. However, the fact that at such meetings the Council discussed problems with officers of the Department of Employment or with public or private groups, rather than merely among themselves, would not have the effect of transforming the meetings into other than meetings of the Council.

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RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to the Doctrine of Worthier Title

The so-called doctrine of worthier title originated in feudal England as a rule of property which made void an attempted testamentary or inter vivos transfer of real property to the transferor's own heirs. The rule originated in feudal policy and was abolished by statute in England in 1833 when feudalism had passed into history.

What might be called the American doctrine of worthier title exists in most states today. However, as generally applied this doctrine differs in three important respects from its English antecedent. First, it is not applied to testamentary transfers. Second, it is generally applied to inter vivos transfers of personal as well as real property. Third, it is not applied as a rule of property which disables a person from making an effective grant of property to his own heirs or next of kin but as a presumption or rule of construction that a grantor does not ordinarily intend by executing such a grant to divest himself of his interest in the property. As is shown in the research consultant's report, infra, the California Supreme Court held in Bixby v. California Trust Company,¹ decided in 1949, that the American doctrine of worthier title is a part of the law of this State.

1. 33 Cal.2d 495, 202 P.2d 1018 (1949)

The Commission recommends that the doctrine of worthier title be abolished as to both inter vivos and testamentary transfers, through the enactment of new sections of the Civil Code and the Probate Code, set forth below. The Probate Code provision is recommended only out of an abundance of caution since it is generally agreed that the American doctrine of worthier title does not apply to testamentary transfers.

There are three basic reasons for the Commission's recommendation:

1. The Commission believes that the doctrine of worthier title is based on a false premise - i.e., the assumption that a person granting property to his own heirs or next of kin does not really intend to give the property to them or understand that he has done so but rather intends to retain a reversion in the property with full power to dispose of it again in the future. Thus, the doctrine frustrates rather than effectuates the actual intention of grantors in the cases in which it is decisive.

2. As the research consultant's analysis of the New York decisions applying the American doctrine of worthier title shows, the doctrine breeds litigation. Since the doctrine is merely a presumption or rule of construction to be applied in ascertaining the intention of the grantor, it can be overcome by showing that the grantor actually meant what he said - i.e., that the property should go to his heirs or next of kin. In New York litigants have frequently attempted to make such a showing, with a record of success which has encouraged others to do so. While there has been no such history of litigation

in California in the few years which have elapsed since the Bixby case was decided, there is no reason to believe that the citizens of this State will prove to be less litigious than those of New York as situations arise over the years in which the doctrine is applicable.

3. As the research consultant's study shows, the doctrine of worthier title can easily operate as an estate and inheritance tax trap by creating a reversionary interest in the estate of a grantor who intended to avoid such taxes by making an inter vivos transfer of the property to his heirs or next of kin.

The Commission believes that the statute abolishing the doctrine of worthier title should be applied to legal instruments in existence on its effective date as well as those subsequently executed. A legal doctrine which defeats rather than effectuates intention, breeds litigation, and operates as a potential tax trap should be eliminated from our law as soon as possible. Moreover, the Commission does not believe that grantors have relied upon the Bixby rule in drawing inter vivos instruments; one wishing to retain a reversion rather than to create a remainder would surely do so directly rather than to say the opposite of what he means and rely upon a disputable presumption or rule of construction to accomplish the result which he desires. For these reasons, a provision making the abolition of the doctrine retroactive except as to instruments the meaning of which has been finally adjudicated is included in the statute which the Commission is recommending.

The Commission recognizes, however, that there is some doubt whether a statute abolishing the doctrine of worthier title can constitutionally be made applicable in cases involving instruments in effect prior to its enactment. While the decisions of the United States Supreme Court seem to make it clear that the retroactive application of a statute changing a presumption or a rule relating to burden of proof does not violate the United States Constitution, several California decisions suggest that the retroactive application of such a statute may violate the Constitution of this State. Because of the doubt engendered by the latter decisions the Commission has included a separability clause in the legislation which it is recommending.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to add Section 1073 to the Civil Code and to add Section 109 to the Probate Code, relating to a grant, devise or bequest to a grantor's or testator's own heirs or next of kin.

The people of the State of California do enact as follows:

Section 1. Section 1073 is added to the Civil Code, to read:

3. Nilson v. Sarment, 153 Cal.524, 528, 96 Pac.315, 316(1908); Lewis v. Burns, 122 Cal.358, 55 Pac. 132(1898); Jordan v. Fay, 98 Cal.264, 33 Pac. 95(1893); Estate of Giordano, 85 Cal. App. 2d 588, 193 P.2d 771(1948); Estate of Thramm, 80 Cal. App. 2d 756, 183 P.2d 97 (1947).

1073. The law of this State does not include (1) the common law rule of worthier title that a grantor cannot convey an interest to his own heirs or (2) a presumption or rule of interpretation that a grantor does not intend, by a grant to his own heirs or next of kin, to transfer an interest to them. The meaning of a grant of a legal or equitable interest to a grantor's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of grants. This section shall be applied in all cases in which final judgment has not been entered on its effective date.

Section 2. Section 109 is added to the Probate Code, to read:

109. The law of this State does not include (1) the common law rule of worthier title that a testator cannot devise an interest to his own heirs or (2) a presumption or rule of interpretation that a testator does not intend, by a devise or bequest to his own heirs or next of kin, to transfer an interest to them. The meaning of a devise or bequest of a legal or equitable interest to a testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of wills. This section shall be applied in all cases in which final judgment has not been entered on its effective date.

Section 3. If the application of Section 1073 of the Civil Code or of Section 109 of the Probate Code to any instrument is held invalid, its application to other instruments to which it may validly be applied shall not be affected thereby.