

A G E N D A

for Meeting of

LAW REVISION COMMISSION

San Francisco, April 18-19, 1958

1. Minutes of March 20-21 meeting (sent to you on April 9, 1958).
2. Discussion place of May meeting.
3. Situation report (See Memorandum No. 3, sent to you on April 9).
4. Compensation for consultant on Study No. 34(L) (See Memorandum No. 1, sent to you on April 9).
5. Communication from Harvard Student Legislative Research Bureau (See Memorandum No. 7, sent to you on April 11).
6. Communication from Senator Cobey (See Memorandum No. 4 sent to you on April 9).
7. Study No. 55(L) - Additurs (See Memorandum No. 5, sent to you on April 9).
8. Preliminary discussion with Professor Sherry of his study on Topics Nos. 48 and 54(L) (See Memorandum No. 8, enclosed herewith).
9. Study No. 24 - Mortgages for Future Advances (See Memorandum No. 2, sent to you on April 9).
10. Study No. 37(L) - Claims Statute (See Memorandum No. 10, to be sent later this week).
11. Study No. 22 - Cut-off Date on Motion for New Trial (See Memorandum No. 6, sent to you on April 9).
12. Study No. 23 - Rescission of Contracts (See Memorandum No. 9, enclosed herewith).
13. Study No. 19 - Penal and Vehicle Code overlap (Please refer to my letter of April 9).
14. Study No. 49 - Rights Unlicensed Contractor (Please refer to my letter of April 9).
15. Study No. 56(L) - Narcotics Code (See Memorandum No. 11, to be sent later this week or delivered at meeting).

MINUTES OF MEETING

OF

APRIL 18-19, 1958

San Francisco

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on April 18-19, 1958 at San Francisco:

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman
Honorable Roy A. Gustafson
Mr. Bert W. Levit
Mr. Charles H. Matthews
Professor Samuel D. Thurman

ABSENT: Mr. John D. Babbage, Vice-Chairman
Honorable Clark L. Bradley
Honorable James A. Cobey
Mr. Stanford C. Shaw
Mr. Ralph N. Kleps, ex officio

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

Professor Arthur Sherry, of the School of Law of the University of California at Berkeley, the research consultant on Studies No. 48 and 54(L) was present during a part of the meeting on April 18, 1958.

The Commission was pleased to have as its guest during a portion of the meetings on both days, Mr. Cleto Leus of the legislative reference service of the Philippine Congress.

The minutes of the meeting of March 20-21, 1958, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

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I. ADMINISTRATIVE MATTERS.

A. May Meeting. The Commission members affirmed their intention of having the May meeting at Ventura. It was decided that the meeting should be held at the Pierpont Inn.

B. Status Report. The Commission considered Memorandum No. 3 and the Status of Current Studies Report, dated March 27, 1958 (copies of which are attached to these minutes). The Chairman thought that perhaps too many topics were designated to be presented to the 1959 Session of the Legislature and suggested that Topics 38 (Inter vivos Rights 201.5 Property), 44 (Suit in Common Name) and 55 (L) (Additur) be reserved for presentation at a later date.

C. Communication from Harvard Student Legislative

Research Bureau: The Commission considered Memorandum No. 7 and the letter and brochure received from Mr. Nicholas J. Coolidge, Vice-President of the Harvard Legislative Research Bureau (copies of which are attached to these minutes). The Commission rejected reference of either Study 41 or Study 57 (L) to the Legislative Research Bureau for study and suggested that the Bureau's interest in Study 59 (Revision of California statutes relating to service of process by publication) be determined. The Commission approved Mr. Levit's suggestion that this be regarded as a kind of pilot effort on the part of the Legislative Research Bureau on the understanding that no compensation is to be paid.

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D. Materials Sent by Senator Cobey: The Commission considered Memorandum No. 4, a letter from Senator Cobey dated March 31, 1958, a letter to Senator Cobey from John A. Sprague and materials prepared by the Legislative Counsel relating to transfer of criminal prosecutions for plea and sentence (copies of which are attached to these minutes). After a discussion of the appropriateness of this subject as a study topic, the Commission unanimously approved Mr. Levit's motion to inform Senator Cobey that the Commission would be willing to have him sponsor a resolution to place this matter upon the Commission's agenda unless Senator Cobey prefers another disposition of the matter.

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E. Income Tax Study. The Commission was apprised of the work being done by the State Bar Committee and the Honorable Clark Bradley's Assembly Interim Committee with regard to the adoption of a State Income Tax Statute designed to automatically conform to the federal provisions. The Commission informally expressed the sentiment that this type of a study does not seem within the scope of the Commission's activities.

II. CURRENT STUDIES

A. Study No. 24 - Mortgages for Future Advances. The Commission considered Memorandum No. 2 and a proposed recommendation by the Commission (copies of which are attached to these minutes). There was a general discussion about the inclusion of a definition of future advances in the proposed statute and about the clarity of the proposed draft as respects expenditures made to preserve the security. Mr. Gustafson, Mr. Levit, and Professor Thurman proposed that Section 2975 as it appeared in the recommendation be amended to read as follows:

2975. Mortgages of personal property or crops may be given to secure future advances. If the maximum amount to be secured is stated in the mortgage, the lien for all advances to that amount, whether optional or obligatory, has the same priority as that originally established by the mortgage. If the maximum amount to be secured is not stated, the lien for all optional advances made after actual notice of intervening liens is inferior to them in priority, except that in all cases necessary expenditures made by the mortgagee to preserve the security constitute liens having the same priority as the original lien. Accrued interest on an advance has the same priority as the advance.

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The stated maximum amount means the maximum amount of advances secured at any one time, and does not include amounts already repaid or discharged, accrued interest, or necessary expenditures made by the mortgagee to preserve the security.

Repayment in full of amounts owing under the mortgage does not extinguish the mortgage. All such mortgages shall be discharged on demand of the mortgagor in conformity with the provisions of Section 2941 of this code.

~~Necessary-expenditures-made-by-the-mortgagee-to-preserve the-security-constitute-liens-having-the-same-priority-as-that originally-established-by-the-mortgage.--Accrued-interest-on-an-advance-has-the-same-priority-as-the-advance.~~

As used in this section future advances includes sums that may be advanced, expenditures that may be made other than expenditures by the mortgagee to preserve the security, and indebtedness or obligations that may be incurred subsequent to the execution of the mortgage.

[Consideration of this amendment and the definition was deferred until a later date at Mr. Stanton's suggestion.]

B. Study No. 37 (L) - Claims Statute.

The Commission considered Memorandum No. 10 and Memorandum No. 10 (Supplement) a redraft of the proposed general claims statute, the proposed constitutional amendment, and the minutes of meetings of the Northern and Southern Sections of the State Bar Committee on the Administration of Justice containing suggestions relating to the proposed statute originally drafted by Professor Arvo Van Alstyne (copies of which are attached to these minutes).

The Commission discussed Section 612 of the proposed statute as drafted by Professor McDonough in conformance with the Commission's views as expressed at the March meeting. The Commission approved the following:

612. The governing body may allow a claim in part and reject it in part and may require the claimant to accept the amount allowed in settlement of the entire claim. If no such requirement is made by the governing body in acting on the claim, the claimant may sue for the part of the claim rejected.

Section 613 of the proposed statute was also discussed and the following was unanimously approved:

613. A suit on a cause of action for which a claim has been presented must be commenced within nine months from the date of presentation of the claim.

The Commission considered the comments of the State Bar Committee on Professor Van Alstyne's draft statute and concluded:

(1) The Constitutional amendment should not specifically state that it overrides the Charters of cities and counties.

(2) No exemption need be made for claims for unemployment insurance as these are solely against the State, and therefore already precluded from the scope of the claims statute.

(3) Section 602 should be amended by the addition of the underlined words:

602. As used in this chapter "public entity" includes any county, city, city and county, district, authority, or other political subdivision of the State, whether chartered or not, but does not include the State.

(4) Section 601 should not be changed.

(5) The requirement of verification should be omitted .

(6) No penal section should be included since Section 72 of the Penal Code makes the presentation of false claims a felony.

(7) Section 604 should be redrafted to read as follows:

604. By provision in a written contract to which the public entity is a party, the public entity may waive compliance with the provisions of the chapter with respect to any or all claims arising out of such contract.

An amendment to this which would have added "or may provide a method presenting claims different from that provided in this chapter" at the end of the proposed section 604, did not carry.

Aye: Gustafson, Levit, Matthews, Thurman.

No : Stanton.

(8) Section 608 should remain unchanged. An amendment which would have deleted the words "personally," "sending" and "by mail postmarked" and inserted the word "mailing" did not carry. Mr. Stanton was of the opinion that Section 1020 of the Code of Civil Procedure was applicable to this section.

(9) Section 609 should be amended by the addition of the underlined words and the deletion of the words shown in strike-out:

609. Where the claimant is a minor or is mentally or physically incapacitated and by reason of such disability fails to present a claim within the time allowed, or where a person entitled to present a claim dies before the expiration of the time allowed for presentation, the superior court of the county in which the public entity has its principal office may grant leave to present the claim after the expiration of the time allowed if the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such leave must be made by verified petition ~~accompanied-by-an-affidavit~~ showing the reason

for the delay. and. A copy of the proposed claim shall be attached to the petition. Such petition shall be filed within a reasonable time, not to exceed one year, after the time allowed for presentation. A copy of the petition, the affidavit, and the proposed claim shall be served on the clerk or secretary or governing body of the public entity.

(10) The objection to Section 610 has been cured by the deletion of the word "responsible" preceding the word "officer."

(11) Section 611 should be added in toto to Section 605 to show the sequence of action more clearly.

(12) Section 612 should remain unchanged.

The Commission considered the Executive Secretary's memorandum on the problems encountered in "dovetailing" the new uniform claims statute into existing statutes relating to the presentation and consideration of claims. It was agreed that the problem is of sufficient magnitude to warrant a new contract with the original research consultant under which he would prepare the necessary legislation to carry out the objectives of the Commission with respect to presentation of claims. Mr. Levit felt that the draftsman should proceed on the assumption that no other general claims statutes should remain on the books after enactment of the

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ne claims statute and suggested that the present exclusions be reconsidered with this in mind. Mr. Gustafson concurred and expressed the view that present claims statutes (i.e. - for tax refunds) which require special procedures should be excluded only upon a determination that bringing them within the uniform statute would be unfeasible. It was also suggested that exceptions should exist only where there is a special statute covering handling of such claims and that Section 600 of the uniform claims statute should contain a cross-reference by chapter, article or code section to these special provisions. Mr. Levit suggested that the draftsman should consider the merits of a uniform auditing procedure to be used by the entities in processing claims governed by the claims statute. The Executive Secretary was directed to convey these views to Professor Arvo Van Alstyne, ascertain whether he would be willing to undertake the drafting assignment, and invite him to discuss the matter with the Commission at the May meeting.

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G. Custody Study No. 30. The Commission discussed the exchange of correspondence between the Executive Secretary and Dean Kingsley, of the School of Law, University of Southern California, relating to revision of the custody study. The Commission adopted Mr. Stanton's suggestion that the Executive Secretary write Dean Kingsley suggesting that the matter be taken up upon the Dean's return from his forthcoming South African lecture tour. The possibility that the Staff might prepare a revision of the report to be used as a basis for this discussion was considered.

D. Study No. 22 - Cut-off Date, Motion for New Trial.

The Commission considered Memorandum No. 6 and the research study prepared by Professor Harold G. Pickering of the Hastings College of Law (copies of which are attached to these are attached to these minutes). Mr. Gustafson suggested changes in proposed Section 664.1 and Mr. Stanton suggested changes in view of Section 1010 of the Code of Civil Procedure. Since the Commission was divided upon the basic question involved in the study - whether the time should run from entry of judgment or from notice thereof - further consideration was deferred until a later meeting.

E. Study No. 19 - Penal and Vehicle Code Overlap.

The Commission considered Memorandum No. 3 and the research study prepared by Mr. I. Robert Harris, of the Stanford Law School (copies of which are attached to these minutes). The Commission unanimously approved ^{Mr.}/Gustafson's motion which was seconded by Mr. Matthews to repeal Section 503 of the Vehicle Code and to amend Section 499(b) of the Penal Code as follows:

499(b). Any person who, shall without the permission of the owner thereof, takes or drives any automobile, bicycle, motorcycle or other vehicle, ~~for the purpose of temporarily using or operating the same,~~ with the intent to temporarily deprive the owner thereof of such vehicle shall-be-deemed is guilty of a misdemeanor, and-upon-conviction-thereof-shall-be-punished-by a-fine-not-exceeding-two-hundred-dollars-(\$200),-or-by imprisonment-not-exceeding-three-months,-or-by-both-such fine-and-imprisonment.

The Commission unanimously approved Mr. Gustafson's motion which was seconded by Mr. Matthews to repeal Section 367(d) of the Penal Code and to amend Section 502 of the Vehicle Code as follows:

502. WHEN PERSON DRIVING UNDER
INFLUENCE OF LIQUOR GUILTY OF MISDEMEANOR.

(a) It is unlawful for any person who is under the influence of intoxicating liquor to drive a vehicle, upon-any-highway. Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 30 days nor more than six months or by fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by both such fine and imprisonment and upon a second or any subsequent conviction by imprisonment in the county jail for not less than 90 days nor more than one year or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment. A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 501 of this code.

(b) Whenever any person is convicted of a violation of this section it is the duty of the judge unless, under the provisions of Section 307, the court recommends that there be no license suspension, to require the surrender to him of any operator's or chauffeur's license of such person and to forward the same to the department with the abstract of conviction as provided

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in Section 744 hereof, and the department shall suspend the driving privilege of any person so convicted as provided in Section 307.

The Commission unanimously approved Mr. Gustafson's motion which was seconded by Mr. Matthews to repeal 367 (e) of the Penal Code and to allow Section 501 of the Vehicle Code to stand unamended.

It was also suggested that inaccuracies in the research consultant's study be corrected prior to publication by the Commission.

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F. Study No. 49 - Unlicensed Contractor.

The Commission considered Memorandum No. 6 and the research study prepared by Professor James D. Sumner, Jr. of the School of Law, University of California at Los Angeles (copies of which are attached to these minutes). In a preliminary discussion the Commission unanimously agreed that Section 7031 of the Business and Professions Code should be repealed upon the condition that a statute imposing a less harsh penalty on an unlicensed contractor be enacted. It was further agreed that the principle of a percentage of cost penalty should be adopted.

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G. Additur Study No. 55 (L): The Commission considered Memorandum No. 5 (a copy of which is attached to these minutes). After discussion it was unanimously agreed that the study should be continued, a report made and recommendations formulated for the enactment of such constitutional amendments and statutes as the Commission determines are desirable. It was suggested that the scope of the study include also remittitur and appellate review procedures. Administrative handling of arrangements for this study was left to the discretion of the Executive Secretary. The Commission approved the Chairman's suggestion to increase the honorarium to \$750.

H. Uniform Rules of Evidence No. 34 (L).

(1). The Commission considered Memorandum No. 1 (a copy of which is attached to these minutes) and unanimously approved the payment of \$5,000 to Professor Chadbourn for the second half of his study on the Uniform Rules of Evidence.

(2). The Commission authorized the Executive Secretary to send copies of Professor Chadbourn's memoranda to Professor McCormick. The Commission reaffirmed its policy of notifying all recipients of Commission study materials that any action indicated or suggested was merely tentative and did not necessarily reflect the recommendation to be made by the Commission.

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I. Studies No. 48 and 54 (L) - Juvenile Court Proceedings and Records. The Commission considered Memorandum No. 8 (a copy of which is attached) and discussed with the research consultant, Professor Arthur Sherry of Boalt Hall, the scope and form of his study. The Commission approved Professor Sherry's suggestion that in his study he would follow the plan outlined in his letter of April 9 to the Executive Secretary and the format used by the American Law Institute in proposing statutory revisions.

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J. Study 57 (L) - Law Relating to Bail. The Commission discussed the appointment of a research consultant and Mr. Gustafson offered if a qualified consultant cannot otherwise be found, to provide the extracurricular services of one of his deputies to make the study under his general direction. Mr. Stanton requested that this action be deferred until he could ascertain the ramifications of such an appointment.

Respectfully submitted,

John R. McDonough
Executive Secretary