

A G E N D A

for Meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

February 13-14, 1959

1. Minutes January 1959 meeting (enclosed).
2. Report on Personnel matters.
3. Matters relating to 1959 legislative program:
  - a) Memorandum No. 1 (Sent to you on February 6).
  - b) Correspondence re. Corporations Code study (enclosed).
  - c) Correspondence re. Claims study (enclosed); report on distribution to districts.
  - d) Decision as to when to begin to move bills.
4. Further consideration of studies previously discussed by Commission:
  - a) Study No. 34(L) - Uniform Rules of Evidence. (Chadborn material sent to you on January 16, 1959.) (This will be on the agenda for Saturday.)
  - b) Study No. 33 - Survival of Tort Actions. (See Memorandum No. 3, sent to you on February 6.)
  - c) Study No. 21 - Confirmation of Partition Sales. (See Memorandum No. 2 sent to you on February 6.)
  - d) Study No. 36(L) - Condemnation (oral progress report).
  - e) Study No. 32 - Arbitration. (Progress report)
  - f) Study No. 38 - Inter Vivos Rights - Prob. Code § 201.5 property. (Sent to you on May 6, 1958.)
  - g) Study No. 49 - Rights of Unlicensed Contractor. (Sent to you on January 30, 1959.)
5. New Studies:
  - a) Study No. 48 - Juvenile Court Procedure. (Sent to you on January 27, 1959.)

- b) Study No. 42 - Rights of Good Faith Improver. (Sent to you on January 19, 1959.)
- c) Study No. 51 - Alimony After Divorce. (Sent to you on January 20, 1959.)

minutes

MINUTES OF MEETING

of

February 13 and 14, 1959

SAN FRANCISCO

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on February 13 and 14, 1959, in San Francisco.

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman  
Mr. John D. Babbage, Vice Chairman  
Honorable Clark L. Bradley (13th)  
Honorable Roy A. Gustafson  
Mr. Charles H. Matthews  
Professor Samuel D. Thurman

ABSENT: Honorable James A. Cobey  
Mr. Ralph N. Kleps, ex officio

Messrs. John R. McDonough, Jr., Glenn E. Stephens, and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Professor James H. Chadbourn of the School of Law, University of California at Los Angeles, the research consultant for Study No. 34(L), was present during a part of the meeting on February 14, 1959.

The minutes of the meeting of January 16 and 17, 1959, were unanimously approved after the following changes were made:

- (1) Page 3. The second line of the last paragraph should read ". . . Messrs. Stanton and McDonough had interviewed a number of persons . . ."
- (2) Page 13. The word "legislation" in the first paragraph, fourth line, should be changed to "revision."

I. ADMINISTRATIVE MATTERS

A. Personnel:

(1) Executive Secretary. The Commission discussed and decided that (1) its best interest would be served by appointing as Mr. McDonough's successor a man whose principal interest is in the field of legislation rather than teaching and (2) such an Executive Secretary should devote not less than three-fourths of his time to his work for the Commission. The Executive Secretary reported that Stanford would be agreeable to such an arrangement. The Commission then considered the qualifications of Mr. John DeMouilly for the position. A motion was thereupon made by Mr. Gustafson, seconded by Mr. Bradley and unanimously adopted to authorize the Chairman, in conjunction with Stanford, to offer the position of Executive Secretary to Mr. DeMouilly on the basis suggested, his Stanford title to be determined by the Law School.

(2) Assistant Executive Secretary. The Executive Secretary reported that Mr. Glen E. Stephens started working for the Commission on a TAU appointment as Assistant Executive Secretary on January 19.

B. State Bar Facilities for September Meeting: The Commission considered a letter dated 2/5/59 from Mr. Stanton to the Executive Secretary concerning his conversation with Mr. Jack Hayes as to the availability of the State Bar's San Francisco Board Room for the Commission's September meeting. (A copy of which is attached hereto.) After the matter was discussed, it was agreed that the Executive Secretary should be directed to accept Mr. Hayes' offer of the Board Room for Thursday and Friday, September 24 and 25, and to request the use of the room for Wednesday, September 23, in the event that the Commission should decide to meet on that date also.

C. Correction of October Meeting Minutes: The Executive Secretary reported an error in the portion of the October meeting minutes reporting the joint meeting of the Commission and State Bar Committee to consider the Uniform Rules of Evidence. A motion was made by Mr. Gustafson, seconded by Mr. Babbage, and unanimously adopted to correct the report of the action taken re Rule 63 Subdivision (1) (c) page 8 of the October meeting minutes by deleting the word "or" which precedes subclause (3) and inserting the word "and" in its place.

II. LEGISLATIVE MATTERS

A. Presentation of Bills to Senate Interim Judiciary Committee: The Commission had before it Memorandum No. 1 dated 2/5/59; copies of letters from Mr. William Orrick, Chairman of Committee on Corporations (dated 1/23/59 and 2/4/59) and a copy of the letter from the Executive Secretary to Mr. Orrick (dated 1/30/59); and Assembly Bills Nos. 400, 402 and 405. (A copy of each of these items is attached hereto.)

The Executive Secretary reported that the Interim Judiciary Committee had agreed (1) to recommend to the standing Committee that it approve A.B. 404, the grand jury recodification bill and S.B. 166, the bill abolishing the Doctrine of Worthier Title; and (2) not to make any recommendation to the standing Committee respecting A.B. 403, the bill to amend Sections 2201, 3901, and 3904 of the Corporations Code, in view of the present lack of agreement between the State Bar and the Commission concerning the Commission's proposed legislation. (See discussion infra at 11)

The Commission then acted upon the following matters reported by the Executive Secretary of the various actions of the Interim Committee:

1. The Interim Committee agreed to recommend to the standing Committee that it approve A.B. 400, relating to the overlapping Penal and Vehicle Code sections concerned with the taking of vehicles if Section 499b of the Penal Code is revised to substitute "self-propelled vehicle" for "automobile, bicycle, motorcycle or other vehicle." After the matter was discussed, a motion was made by Mr. Babbage, seconded by Mr. Gustafson, and adopted to approve the substitution of "self-propelled vehicle" for "automobile, bicycle, motorcycle or other vehicle" in Section 499b of the Penal Code.

During the discussion of the Commission's proposed legislation relating to the theft of vehicles, Mr. Gustafson stated that Mr. Martin Pulich, Assistant Public Defender of Alameda County, is of the opinion that there should be a provision enacted making a second temporary taking a felony. After the matter was discussed it was agreed that although the suggestion has merit, no such amendment should now be made to A.B. 400 but that if this suggestion is made at a legislative committee hearing the Executive Secretary is authorized not to oppose such an amendment.

2. The Commission then considered the suggestion of the Interim Committee that no change be made in Vehicle Code Section 502 and that Penal Code Section 367d be made applicable exclusively to driving other than upon a highway.

It was agreed not to accede to these proposals of the Interim Committee at this time and that Mr. Gustafson should write Senator Grunsky pointing out that he has authorized a bill proposed by Mr. Gustafson making this same change in Vehicle Code Section 502.

3. The Commission then considered the various revisions proposed by the Interim Committee to A.B. 405 relating to claims against local public entities.

- (a) It was agreed that the title of Chapter 2 should be revised to read "Claims Against Local Public Entities."
- (b) A motion was made by Mr. Gustafson, seconded by Mr. Babbage and unanimously adopted (1) to revise "the" to "a" in the phrase in Section 713 "the residence or business address," and (2) to revise the phrase in Section 712 "give the person presenting the claim written notice of its insufficiency" to read "mail to the person presenting the claim at the address of such person appearing on the claim written notice of its insufficiency."

The Commission then considered whether the notice provision in the last paragraph of Section 716 should be revised to conform to the revision made to Section 712.

After the matter was discussed a motion was made by Mr. Gustafson, seconded by Mr. Bradley and adopted to not revise the last paragraph of Section 716. Mr. Matthews expressed opposition.

- (c) The Commission then discussed whether Section 713 should be revised to eliminate the possibility that this section might be interpreted as requiring the defense to be asserted as an affirmative defense and preclude its being raised by demurrer. After the matter was discussed it was agreed that the claimant should be required to plead and prove either that his claim has been presented in conformity with the provisions of Article 2 or facts excusing his failure to do so, rather than placing the burden on the entity.

A motion was then made by Mr. Babbage and seconded by Mr. Gustafson to accomplish this result by deleting the first sentence from Section 713. The motion carried:

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

No: Bradley

Not Present: Cobey

(d) A motion was made by Mr. Babbage and seconded by Mr. Matthews to approve the proposed revision of Section 715(a) to read:

(a) Claimant was a minor during all of such time or;

The motion carried:

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

No: None.

Not Present: Cobey.

The Commission then considered the correspondence received by Mr. Bradley from Messrs. Gill, Nelson, Gardiner and Vaughn commenting on Assembly Bills Nos. 405 and 408. It was agreed that the suggestion made by Mr. Gardiner relating to the ambiguity in Section 716(c) in view of Section 719 had merit. After the matter was discussed a motion was made by Mr. Babbage and seconded by Mr. Bradley to revise the last sentence of Section 716(c) to read:

If the governing body allows the claim in part and rejects it in part it may require the claimant, if he accepts the amount allowed, to accept it in settlement of the entire claim.

The motion carried:

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

No: None.

Not Present: Cobey.

III. CURRENT STUDIES

A. Study No. 11 - Sale of Corporate Assets: The Commission considered copies of two letters from Mr. William Orrick, Chairman of the Committee on Corporations (dated 1/23/59 and 2/4/59) and a copy of the letter from the Executive Secretary to Mr. Orrick (dated 1/30/59). (A copy of each of these items is attached.) During the discussion Mr. Stanton pointed out that the Commission could either disregard the action of the State Bar and present the bill to the standing Committee or discuss the matter with Mr. Graham Sterling, President of the State Bar, pointing out to him that the Commission has considered the Committee's view but does not find it persuasive. After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Matthews, and unanimously adopted to authorize the Chairman and Executive Secretary to communicate with Mr. Sterling and request his views as to whether and how this lack of agreement of the Commission and the State Bar Committee might be resolved.

B. Study No. 31 - Doctrine of Worthier Title: The Commission considered Memorandum No. 4 dated 2/11/59; a copy of a letter from the State Bar Committee to consider the Doctrine of Worthier Title to the State Bar Board of Governors (dated 1/9/59); a copy of the letter from Professor Harold Verall (dated 1/13/59); a copy of the letter from the Executive Secretary to Mr. Landels, Chairman of the State Bar Committee (dated 1/30/59); a copy of the letter from Mr. Landels (dated 2/5/59); and a copy of the letter from Mr. Jack Hayes (dated 2/6/59). (A copy of each of these items is attached hereto.) After the matter was discussed it was agreed that when the Chairman and the Executive Secretary speak to Mr. Sterling they advise him of Mr. Landels' views and request him to bring the matter to the attention of the Board of Governors with a view to getting the State Bar's endorsement of S.B. 166.

C. Study No. 33 - Survival of Tort Actions: The Commission had before it Memorandum No. 3 dated 2/6/59; a draft of proposed legislation designed to effectuate the action taken by the Commission at its January meeting (dated 2/6/59) and a copy of survival statutes of certain other states. (A copy of each of these items is attached hereto.)

The Commission first considered whether it should (1) repeal Section 956 of the Civil Code and enact new Sections 956 and 957 of the Civil Code or (2) amend Section 956 of the Civil Code. After some discussion, the latter procedure was agreed upon.

The question was then raised as to whether the Commission should recommend legislation which would cause all causes of action to survive. There followed some discussion as to the meaning of the term "tort" and as to what causes of action, if any, would not survive if only "tort" causes of action were made to survive under this section. A request was made to the Executive Secretary that the staff look into and report on these questions.

After further consideration of Section 956 (and after action was taken on the adoption of a portion of the New York statute relating to simultaneous death, infra) a motion was made by Mr. Babbage, seconded by Mr. Matthews, and unanimously adopted to substitute the phrase "a wrongful act, neglect or default" for the word "tort," subject to findings of further research.

Mr. Thurman then stated that the language "shall not abate" is technically inaccurate since the term "abate" traditionally refers to the termination of a proceeding or action, rather than of a cause of action. After discussion it was agreed to revise the clause in Section 956 "shall not abate by reason of a death of the wrongdoer or any other person liable therefor" to read "shall not be lost by the death of any person but it shall survive in favor of or against the executor or administrator of such deceased person."

The Commission then considered the proposed second sentence of Section 956 of the Civil Code relating to punitive and exemplary damages. After the matter was discussed it was agreed that the staff should redraft this sentence using language couched in terms of what elements of damage may be included in a judgment against the executor or administrator.

After the Commission considered the first clause of the third sentence (up to the bracketed material) of Section 956 of the Civil Code it was agreed that this clause should be revised to read "When the person having a thing in action dies before judgment, the damages recoverable shall be limited to such loss or damage as the decedent sustained or incurred prior to the date of death."

The Commission then considered whether damages should be limited to loss of earnings and expenses sustained or incurred as a result of the injury prior to death when the

injured party dies before judgment. After the matter was discussed a motion was made by Mr. Bradley and seconded by Mr. Stanton to provide that in such cases the judgment shall not include damages for pain, suffering, mental anguish, etc. The motion did not carry.

Aye: Bradley, Stanton.

No: Babbage, Gustafson, Matthews, Thurman.

Not Present: Cobey.

A motion was then made by Mr. Thurman and seconded by Mr. Matthews to exclude from Section 956 any provision excluding recovery of damages for pain, suffering, mental anguish, etc. The motion did not carry.

Aye: Babbage, Gustafson, Matthews, Thurman.

No: Bradley, Stanton.

Not Present: Cobey.

The Commission then considered the proposed provision in Section 956 of the Civil Code relating to the survival of an action where the death of the person who would have been liable therefor occurs simultaneously with or prior to the loss or damage. After a discussion of both the proposed provision and the second paragraph of Section 118 of the New York statute it was agreed that the New York provision is preferable and that, with certain revisions, it should be incorporated in Section 956. A motion was made by Mr. Gustafson and seconded by Mr. Babbage to adopt the following

paragraph after the first sentence in Section 956 of the  
Civil Code:

Where a loss or damage resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such loss or damage or if his death had not intervened between the wrongful act, neglect or default and the resulting loss or damage, an action to recover for such loss or damages for such death or injury may be maintained against the executor or administrator of such person.

The motion carried:

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

No: None.

Not Present: Cobey.

D. Study No. 34(L) - Uniform Rules of Evidence: The Commission considered certain portions of a memorandum prepared by Professor Chadbourn relating to the portions of the Uniform Rules relating to the privilege against self-incrimination (a copy of which is attached.) After the matter was discussed the following action was taken:

1. Subdivision (1) of Rule 23. During the discussion it was noted that Subdivision (1) of Rule 23 is narrower in scope than Section 1323.5 of the Penal Code in that Section 1323.5 gives a person a right not to be called as a witness in proceedings other than those in which he is a criminal defendant. The Commission discussed whether Subdivision (1) gives all of the immunity to being called as a witness which a person ought to have. A motion was then made by Mr. Gustafson and seconded by Mr. Thurman to approve the adoption of Subdivision (1) of Rule 23 with the substitution of the word "defendant" for the word "accused" and to repeal Section 1323.5 of the Penal Code. The motion did not carry:

Aye: Gustafson, Matthews, Stanton, Thurman.

No: Babbage.

Not Present: Bradley, Cobey.

The question was reopened later. Mr. Babbage stated that although he favors the adoption of Subdivision (1) of Rule 23 insofar as it goes, he does not favor the repeal of

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Section 1323.5 of the Penal Code insofar as it goes further.

A motion was then made to approve the adoption of Subdivision (1) of Rule 23 with the substitution of the word "defendant" for the word "accused" and with the express understanding that the question of repealing Section 1323.5 will be decided at a later time. The motion carried:

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

No: None.

Not Present: Bradley, Cobey.

2. Subdivision (3) of Rule 23. A motion was made by Mr. Babbage and seconded by Mr. Matthews to approve the adoption of Subdivision (3) of Rule 23 with the substitution of the word "defendant" for the word "accused." The motion carried:

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

No: None.

Not Present: Bradley, Cobey

3. Subdivision (4) of Rule 23. A motion was made by Mr. Babbage and seconded by Mr. Matthews to disapprove the adoption of Subdivision (4) of Rule 23 because of the doubts expressed by Professor Chadbourn concerning its constitutionality. The motion carried:

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

No: None.

Not Present: Bradley, Cobey.

A motion was then made by Mr. Babbage and seconded by Mr. Thurman to rewrite Subdivision (4) of Rule 23 to incorporate verbatim the language of Article I of Section 13 of the California Constitution. The motion carried:

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

No: None.

Not Present: Bradley, Cobey.

A motion was then made by Mr. Babbage and seconded by Mr. Gustafson to substitute the word "action" for the word "case" which precedes the phrase "whether the defendant testifies or not" in the language taken from Section 13 of Article I of the California Constitution which is to be made Subdivision (4) of Rule 23. The motion carried:

Aye: Babbage, Gustafson, Matthews, Stanton, Thurman,

No: None.

Not Present: Bradley, Cobey.

4. Rule 25. After discussion of the first portion of the opening paragraph of Rule 25 a motion was made by Mr. Matthews and seconded by Mr. Thurman to substitute the phrase "in a judicial proceeding" for the phrase "in an action or" in Rule 25. The motion carried:

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

No: None.

Not Present: Bradley, Cobey.

During further discussion of the opening paragraph of Rule 25 Mr. Gustafson took the position that "public official . . . or any governmental agency" should be deleted from Rule 25 inasmuch as the Uniform Rules of Evidence are, by definition, concerned only with matters of evidence in proceedings conducted by courts and do not apply to hearings or interrogations by public officials or agencies. As an example, he cited the case of a person accused of a crime by a police officer. The Uniform Rules of Evidence should not be concerned with what the police officer may ask the person nor with what rights, duties or privileges the questioned person has at the police station.

Furthermore, Mr. Gustafson argued that even if it were decided to extend the rules beyond the situation referred to in Rule 2 ("every proceeding, both criminal and civil, conducted by or under the supervision of a court"), it would be illogical to speak of a privilege to refuse to disclose when there is no duty to disclose in the first place. He believes that an evidentiary privilege exists only when the person questioned would, but for the exercise of the privilege, be under a

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duty to speak. Thus, he said, the person who refuses to answer a question or accusation by a police officer is not exercising an evidentiary "privilege" because the person is under no legal duty to talk to the police officer.

Whether an accusation and the accused's response thereto are admissible in evidence is a separate problem with which Rule 25 does not purport to deal. Under the present law, silence in the face of an accusation in the police station can be shown as an implied admission. On the other hand, express or implied reliance on the constitutional provision as the reason for failure to deny an accusation has recently been held to preclude the prosecutor from proving the accusation and the conduct in response thereto (People v. Clemmons [1957], 153 Cal. App. 2d 64; People v. Abbott [1956], 47 Cal. 2d 362; People v. McGee [1947], 31 Cal. 2d 229; People v. Simmons [1946], 28 Cal. 2d 699) although other cases taking the opposite view have not been overruled. (People v. Peterson [1946], 29 Cal. 2d 69; People v. Jones [1943], 61 Cal. App. 2d 608; People v. Wilson [1923], 61 Cal. App. 611; People v. Graney [1920], 48 Cal. App. 773.) The present law is thus unclear on this point and it is conceivable that the Supreme Court will ultimately decide to go back to the rule that the failure of a person to expressly deny an accusatory statement is some evidence of its truth regardless of the reasons given by the person for refusing to answer or deny the accusation.

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But, argues Mr. Gustafson, if given conduct of an accused in response to an accusation is evidence which the courts feel must be excluded because of the constitution, there is no need to attempt to define these situations in an exclusionary rule in the Uniform Rules of Evidence. A comparable situation would be where the judge orders a specimen of bodily fluid taken from a party. The rules permit this. But the draftsmen point out that "a given rule would be inoperative in a given situation where there would occur from its application an invasion of constitutional rights . . . . [Thus] if the taking is in such manner as to violate the subject's constitutional right to be secure in his person the question is then one of constitutional law on that ground."

After this suggestion was discussed a motion was made by Mr. Gustafson and seconded by Mr. Babbage to approve the adoption of the opening paragraph of Rule 25 as revised to read:

Subject to Rules 23 and 37, every natural person has a privilege which he may claim, to refuse to disclose in a judicial proceeding any matter that will incriminate him, except that under this rule,

The motion carried:

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

No: None.

Not Present: Bradley, Cohey.

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A motion was then made by Mr. Matthews and seconded by Mr. Gustafson to revise Rule 7 to read:

Except as otherwise provided in these Rules. . . No person has a privilege in a judicial proceeding to refuse to be a witness, and . . . no person has a privilege to refuse to disclose any matter or to produce any object or writing . . .

The motion carried:

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

No: None.

Not Present: Bradley, Cobey.

5. Rule 25(a). A motion was made by Mr. Gustafson and seconded by Mr. Babbage to approve the adoption of Subdivision (a) of Rule 25 as revised to read:

(a) the matter shall be disclosed if the judge finds that the matter will not incriminate the witness; and

The motion carried:

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

No: None

Not Present: Bradley, Cobey.

E. Study No. 37(L) - Claims Statutes: The Commission had before it a copy of the letter from Mr. Donald Gallagher, Chief Counsel for the State Compensation Insurance Fund (dated 1/23/59); a copy of the letter from the Executive Secretary to Mr. Gallagher (dated 1/30/59); a copy of the letter from Professor Van Alstyne (dated 2/5/59); and copies of mimeographed letters A and B (dated 2/12/59) which are being sent out with the material distributed to persons interested in district management and to districts. (A copy of each of these items is attached hereto.)

1. The Executive Secretary reported that the Commission's Recommendation and Study and A.B. 409 or A.B. 410 (depending on the district) relating to claims against districts were being distributed to the following persons or districts:

1. Approximately 43 attorneys and law firms suggested by Messrs. O'Melveny and Myers and Orrick, Dalquist, et al.
2. Six associations representing districts.
3. Approximately 38 special districts named in A.B. 410.
4. Approximately 169 various districts throughout California selected at random from lists of districts by counties made available by Mr. Bradley.

2. The Commission then considered the question raised by the Executive Secretary as to when the hearing should be set for the presentation of the Commission's legislation relating to the presentation of claims. After the matter was discussed it was agreed that Mr. Bradley should contact Mr. Biddick, Chairman of the Assembly Judiciary (Civil) Committee, and request a special hearing for the presentation of Assembly Bills Nos. 405 through 410.

3. The Commission then considered the letter from Professor Van Alstyne pointing out another claims statute, Section 4.23 of the Los Angeles Metropolitan Transit Authority Act should be amended. After the matter was discussed a motion was made by Mr. Babbage, seconded and unanimously adopted to amend Section 4.23 of the Los Angeles Metropolitan Transit Authority Act.

4. The Commission then considered the letter from Mr. Gallagher and the Executive Secretary's response, made after consultation with Mr. Kleps. After the matter was discussed a motion was made by Mr. Matthews, seconded and adopted, to add Section 5 to A.B. 406 to read:

Sec. 5. The provisions of this act insofar as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

February 5, 1959

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

Dear John:

Jack Hayes telephoned me yesterday with regard to plans for the meeting of the Commission to be held in connection with the next State Bar convention. The convention will be held in San Francisco during the week beginning Monday, September 21, 1959. The headquarters hotel will be the Fairmont.

Jack has offered the facilities of the State Bar in the Central Tower for a meeting of the Commission on Thursday and Friday, September 24 and 25, if we intend to schedule one for that date. A room at the Fairmont would involve money, which the State Bar could not undertake to provide.

I have indicated to Jack that I thought the facilities at State Bar headquarters would be quite acceptable to the Commission but that the matter would be discussed at our next meeting and he would be advised thereafter of the Commission's desires. Please place the matter on the agenda for discussion at our February meeting.

Yours very truly,

Thomas E. Stanton, Jr.

TES:hk

ORRICK, DAHLQUIST, HERRINGTON &  
SUTCLIFFE

405 Montgomery Street  
San Francisco 4, Calif.

*minutes*

January 23, 1959

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

Re: Committee on Corporations of the  
State Bar of California

Dear Mr. McDonough:

I read to the Committee on Corporations of the State Bar of California, at its meeting on January 16, 1959, your letter dated January 13, 1959, addressed to me as Chairman of the Committee, and we again discussed the "minor amendments" proposed by the California Law Revision Commission to Sections 2201, 3901, and 3904 of the Corporations Code.

The Committee unanimously re-affirmed the action taken at its meeting held November 21, 1958 (which was reported to the Board of Governors in paragraph 2 of my letter dated December 15, 1958) that the recommendation of the Commission be disapproved and that no amendment be made to said sections.

The Committee was of the opinion that the rule requiring the consent of the shareholders before the sale of all or substantially all of the property and assets of a corporation could be consummated should not be revised even where the very purpose for which the corporation was formed is to sell its assets, for the reason, among others, that it would be difficult to determine whether or not a corporation was selling its assets "in the usual and regular course of its business", and that corporations, other than a corporation organized for the very purpose of selling all of its assets might try to avoid the necessity of obtaining the consent of its shareholders to the sale of all, or substantially all, of its assets on the grounds that such a sale was "in the usual and regular course of its business".

The Committee was of the further opinion that the possible harm which might be occasioned by enacting the amendments proposed by the Commission outweighs the benefits which would be derived by a very limited number of corporations, and, accordingly, unanimously opposed any amendment to the three sections.

Sincerely yours,

William H. Orrick, Jr.

cc: Mr. Thomas E. Stanton, Jr.  
Mr. Jack Hayes  
Mr. Graham L. Sterling, Jr.  
Mr. Austin H. Peck, Jr.

Orrick, Dahlquist, Herrington & Sutcliffe  
405 Montgomery Street  
San Francisco 4

February 4, 1959

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

Dear Mr. McDonough:

Thank you for your letter of January 30, 1959 in connection with the amendments proposed by the California Law Revision Commission to Corporations Code Sections 2201 and 1390.

You will, I think, be interested in the following comments made by Mr. Peck, Vice Chairman of the Committee on Corporations of the State Bar of California in a letter to me dated February 3, 1959:

"I still am of the view that our committee acted properly and correctly in recommending against the amendments. The Jeppi case is, in my opinion, an unfortunate one, not so much in the decision which the court made on the facts presented to it, but in the language which the court used in its opinion. I don't think that it would be desirable to codify such a decision. It may be that some legislation is indicated which will clarify the problem of when stockholder consent is and is not required. It could be argued, from the Jeppi decision, that any disposition of assets by a corporation which is not in the ordinary course of business requires stockholder consent even though the assets so disposed of constitute an insignificant portion of the total assets. The language of the existing statute, 'all or substantially all' should have some significance."

Any time you are in San Francisco I would be delighted to meet with you. I do not, however, think that the Committee, which has twice considered the above mentioned proposed amendments, is likely to reverse itself at this time.

Sincerely yours,

S/ William H. Orrick, Jr.  
William H. Orrick, Jr.

cc: Mr. Austin Peck, Jr.

minutes  
January 30, 1959

Mr. W. H. Orrick  
Attorney at Law  
405 Montgomery Street  
San Francisco, California

Dear Mr. Orrick:

I have your letter of January 23 in response to mine of January 13, both relating to the amendments which the California Law Revision Commission proposes to recommend to Sections 2201, 3901 and 3904 of the Corporations Code.

The Law Revision Commission considered the Corporation Committee's original action at its January meeting. The Commission had difficulty in understanding the action of the Committee on Corporations for the reason that the amendments which it proposed to Sections 2201 and 1390 simply codify the decision of the California Supreme Court in Jeppi v. Brockman Holding Co., 34 Cal.2d 11, 206 P.2d 847 (1949). The Jeppi decision, in turn, simply adopts as the law of California a rule which is accepted in a number of other states and by various writers on corporation law. (See discussion at pages g-10 and g-11 of the Commission's research study.) The Commission's proposed amendment of Section 3904 is designed simply to conform this section to the amendments of Section 2201 and 3901.

In the course of making this study the Commission discussed various proposed amendments which were then under consideration with Professor Richard W. Jennings of the School of Law of the University of California at Berkeley. In a letter of August 18, 1958 Mr. Jennings had the following to say about the amendments here under discussion:

I note that the Commission has also reaffirmed its determination to codify the Jeppi decision in Sections 2201 and 3901 and to amend Section 3904 concomitantly. I see no objection to this proposal.

The Commission also communicated with Mr. Graham L. Sterling, Jr. on this subject and in its letter to him of July 22, 1958 stated:

At the July meeting the Commission reaffirmed its determination to codify the Jeppi decision in Sections 2201 and 3901 and to amend Section 3904 concomitantly.

In his reply of August 29, 1958 Mr. Sterling made no adverse comment relating to this proposal, although he had theretofore received a copy of Professor Jennings communication to the Commission.

If you think it would facilitate the reaching of an agreement between

Mr. W. H. Orrick

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January 30, 1959

the Corporations Committee and the Law Revision Commission on this matter for you and me to discuss it, I would be happy to come to San Francisco for this purpose at your convenience.

Very truly yours,

John R. McDonough, Jr/  
Executive Secretary

JRM:imh

cc to Mr. Thomas E. Stanton, Jr.  
Mr. Jack A. Hayes  
Mr. Graham L. Sterling, Jr.  
Mr. Austin H. Peck, Jr.

*minutes*

STATE COMPENSATION INSURANCE FUND

January 23, 1959

Mr. John McDonough  
Stanford Law College  
c/o California Law Revision Commission  
Stanford, California

Dear Mr. McDonough:

Re A.B. 406

I am writing you relative to A.B. 406 at the invitation of Mr. Clark Bradley.

Under the provisions of Government Code sections 16021 and 16041 (which will be superseded by sections 621 and 641 as proposed in A.B. 406) there is no obligation in any otherwise applicable case to present to the State Board of Control a claim against the State Compensation Insurance Fund as a condition precedent to bringing suit. This was held in Burum v. State Fund, 30 C.2d 575, 585. Also, this is the way the Fund would like to have it, in order to maintain equality of liability as well as of advantage with private insurers.

My question is whether the new enactment of A.B. 406 will change this situation.

I recognize that proposed sections 621 and 641 are in purpose transpositions only; but sections 16021 and 16041 are proposed to be repealed, and the new sections will come into being as new enactments.

It is true that the sections under study in the Burum case were Political Code sections 667 and 688 and in due course were repealed, and that Government Code sections 16021 and 16041 were new enactments; but, I believe, they were enacted under the interpretive protective umbrella of Government Code section 2. I doubt if the enactment of new sections in A.B. 406 at this later date would enjoy this protection.

Mr. Bradley stated, if I understood him, that he has no wish to introduce substantive changes into any of the bills which constitute the series of which A.B. 406 is a part, and he will accept any clarifying amendment required to maintain present meanings and interpretations.

May I suggest that you incorporate in A.B. 406, and perhaps in other bills in the series, a statement of legislative intent which would not necessarily have to be made a section in the Government Code but would be and remain an independent paragraph in the statute: either to the effect that Government Code section 2 will be applied to the interpretation of the enactments, or repeating the substance of section 2 verbatim. I do think some protective measure should be taken.

Finally, may I respectfully suggest that the phrase "is added

Mr. John McDonough

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January 23, 1959

to division 3.5," appearing in the printed bill on page 1 at lines 5-6 and on page 6 at line 2 seems incorrect, since, if my edition of the Code is correct, there is no present "division 3.5" to which anything can be "added."

Sincerely,

S/ Donald Gallagher  
DONALD GALLAGHER  
Chief Counsel

DG:le

c: Mr. Clark Bradley

January 30, 1959

Mr. Donald Gallagher  
Chief Counsel  
State Compensation Insurance Fund  
450 McAllister Street  
San Francisco 1, California

Dear Mr. Gallagher:

Thank you very much for your letter of January 23, 1959. I have discussed the question which you have raised relating to the possible construction of the provisions of the A.B. 406 with Mr. Bradley and he has agreed to amend the bill by adding to it a new Section 4 to read as follows:

Sec. 4. The provisions of this Act insofar as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

You are quite right, of course, that there is not now any Division 3.5 of Title 1 of the Government Code. However, this Division is added to the code by Assembly Bill 405, the first of the series of bills prepared by the Commission relating to claims against public entities.

Yours very truly,

John R. McDonough, Jr.  
Executive Secretary

JRM:ln

cc: Mr. Clark Bradley

*minutes*

February 5, 1959

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

Dear John:

As I have been anticipating, another heretofore undiscovered claims statute has just been brought to my attention.

This is one which is pretty hard to find, for it is not reproduced at all in Deering's Public Utilities Code, but is reproduced in a special appendix to the West Annotated Public Utilities Code.

The claims statute in question is Cal. Stats. 1957, Chapter 547, Section 4.23, which is part of the Los Angeles Metropolitan Transit Authority Act of 1957.

I thought I should call this to your attention so that it might be incorporated into the general claims legislation during the present session if that legislation gets to the point of amendment. Although I am hopeful that we have identified all of the claims legislation, I am not entirely certain that this has been done. I did make an effort to double check at the time I was preparing my Third Progress Report in connection with the drafting problems, but as this letter indicates, at least one claims statute escaped me. Perhaps there may be others also.

Sincerely yours,

Arvo Van Alstyne

AVA:cz  
CC - R.N. Kleps

*minutes  
H. Districts*

State of California  
CALIFORNIA LAW REVISION COMMISSION

School of Law  
Stanford, California

February 12, 1959

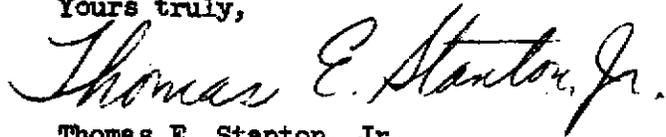
The Law Revision Commission has completed a study of the various provisions of California law relating to the presentation of claims against governmental entities. Honorable Clark L. Bradley has introduced Assembly Constitutional Amendment No. 16 and Assembly Bills Nos. 405 to 410 to effectuate the Commission's recommendations.

Because of the interest your district will undoubtedly have in the legislation which the Commission proposes relating to special districts, we enclose a copy of the Commission's Recommendation and Study, which contains the new general claims statute which the Commission has drafted, and a copy of the Assembly Bill which makes this statute applicable to your district.

The Commission will welcome any comments or criticisms you may have regarding the enclosed material. Please address any communications to Professor John R. McDonough, Jr., Executive Secretary, California Law Revision Commission, School of Law, Stanford University, California.

A limited number of copies of the enclosed items are available on request.

Yours truly,



Thomas E. Stanton, Jr.  
Chairman

TES:imh  
Enclosures

*minutes*  
*B*

State of California  
CALIFORNIA LAW REVISION COMMISSION

School of Law  
Stanford, California

February 12, 1959

The Law Revision Commission has completed a study of the various provisions of California law relating to the presentation of claims against governmental entities. Honorable Clark L. Bradley has introduced Assembly Constitutional Amendment No. 16 and Assembly Bills Nos. 405 to 410 to effectuate the Commission's recommendations.

It has occurred to us that you may be interested in this legislation. Accordingly, we enclose a copy of the Commission's Recommendation and Study, which contains the new general claims statute which the Commission has drafted, and a copy of A. B. 409 which makes this statute applicable to various districts.

The Commission will welcome any comments or criticisms you may have regarding the enclosed material. Please address any communications to Professor John R. McDonough, Jr., Executive Secretary, California Law Revision Commission, School of Law, Stanford University, California.

A limited number of copies of the enclosed items are available on request.

Yours truly,

*Thomas E. Stanton, Jr.*

Thomas E. Stanton, Jr.  
Chairman

TES:imh  
Enclosures