

AGENDA
for meeting of

Place of Meeting

State Bar Building
1230 West Third Street
Los Angeles

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

July 22-23, 1960

Friday, July 22

1. Minutes of June 1960 Meeting (sent).
2. Budget for 1961-62 Fiscal Year.
See: Memorandum No. 56 (1960) (sent).
3. Presentation of Bills to Interim Committees.
See: Memorandum No. 57 (1960) (sent).
Supplement to Memorandum No. 57 (1960) (enclosed).
4. Study No. 37(L) - Claims Against Public Officers and Employees.
See: Memorandum No. 58 (1960) (sent).
Supplement to Memorandum No. 58 (1960) (sent).
Consultant's Study (you have this study).
5. Study No. 32 - Arbitration.
See: Memorandum No. 59 (1960) (to be sent).
6. Study No. 38 - Inter Vivos Rights.
See: Memorandum No. 62 (1960) (sent).
First Supplement to Memorandum No. 62 (1960) (enclosed).
Second Supplement to Memorandum No. 62 (1960) (to be sent).

Saturday, July 23

1. Study No. 36(L) - Condemnation (Mr. Nibley will be present).
See: Memorandum No. 52 (1960) (apportionment of award)
(distributed for June meeting).
Study on Apportionment of Award (sent 6/9/60).
Memorandum No. 64 (1960) (Recommendation and Statute on
Apportionment of Award) (enclosed).
Memorandum No. 60 (1960) (pre-trial and discovery) (to be sent)
Study on Pre-trial and discovery (sent).
2. Study No. 23 - Rescission of Contracts.
See: Memorandum No. 61 (1960) (enclosed).
Supplement to Memorandum No. 61 (1960) (to be sent).
Study on Rescission of Contracts (you have this study).
3. 1961 Annual Report
See: Memorandum No. 63 (1960) (enclosed).

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MINUTES OF MEETING
of
July 22 and 23, 1960
Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on July 22 and 23, 1960.

Present: Roy A. Gustafson, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable Clark L. Bradley
Honorable James A. Cobey
Leonard J. Dieden
George G. Grover (July 22)
Herman F. Selvin
Vaino H. Spencer
Thomas E. Stanton, Jr.

Absent: Ralph N. Kleps, Ex Officio

Messrs. John H. DeMouilly and Joseph B. Harvey and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Messrs. Robert Nibley and Stanley Tobin of the law firm of Hill, Farrer & Burrill of Los Angeles, research consultant for Study No. 36(L) - Condemnation, were present during part of the meeting on July 23.

A motion was made, seconded and unanimously adopted to approve the minutes of the meeting held on June 16, 17 and 18, 1960, after the word "month" was substituted for the word "year" in the fifth line of the second paragraph on page 3.

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I. ADMINISTRATIVE MATTERS

A. Commission Budget for Fiscal Year 1960-61 and 1961-62:

The Commission considered Memorandum No. 56(1960) and a copy of the letter from Mr. Robert Nibley (dated July 18, 1960). After the matter was discussed the following action was taken:

Request of Mr. Robert Nibley for the law firm of Hill, Farrer & Burrill. The Commission has entered into two contracts with the law firm of Hill, Farrer & Burrill for research reports on Study No. 36(L) - Condemnation. A motion was made, seconded and adopted to approve the request of Mr. Robert Nibley to modify the second contract [Contract No. 1959-60 (4), dated Nov. 23, 1959] to increase the amount to be paid by the Commission under such contract by \$6,000, making the total amount of the contract \$11,500, providing that it is constitutionally possible. The staff was directed to do the necessary legal research to determine whether the Constitution bars the modification of an existing contract executed by a state agency where no additional consideration is offered.

Revised Budget - For 1960-61 Fiscal Year. A motion was made, seconded and unanimously adopted to approve the proposed revised budget for the 1960-61 fiscal year with the following change: The \$5,000 designated for "Consultants for studies assigned by 1961 legislature" is to be designated as an amount for "Consultants for other studies assigned to Commission."

Proposed Budget for 1961-62 Fiscal Year. A motion was made, seconded and unanimously adopted to approve the proposed budget for the 1961-62 fiscal year with the following change: The \$5,000 designated for "Consultants for studies assigned by 1961 and 1962 legislative sessions" is to be designated as an amount for "Consultants for studies assigned to the Commission."

B. Presentation of Commission's 1961 Legislative Program to Interim Committees. The Commission considered Memorandum No. 57(1960) and a supplement to Memorandum No. 57(1960) containing a letter received from Mr. Jan Stevens, Counsel, Assembly Committee on Judiciary - Civil (dated July 14, 1960). After the matter was discussed, a motion was made, seconded and unanimously adopted directing the Executive Secretary to contact the Senate Interim Judiciary Committee and Assembly Interim Judiciary-Civil Committee to advise each Committee that the Commission will be prepared to present its 1961 legislative program to the interim committee in November but is willing to make a presentation of some of its program prior to November if that is the wish of the Committee.

C. Constitutional Amendment No. 9 - Claims Against Public Entities: The Chairman reported that he had been advised that the State Bar Board of Governors had resolved to actively support Proposition 9 - the Commission's Constitutional Amendment relating to claims against public entities and their officers,

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agents and employees.

After Mr. McDonough reported that he had been informed that there are some persons that are against passage of the constitutional amendment, it was agreed that the Executive Secretary should contact Mr. Burton Ballard, Editor of the Journal and Public Relations Director of the State Bar, and request him to distribute to the various newspaper publishers (in the name of the State Bar) an item concerning the advantages of the passage of Proposition 9.

D. Dissents by Commissioners; 1960 Annual Report: The Commission considered what policy it should adopt concerning the recording of a dissent by one or more of the members of the Commission to all or part of a recommendation of the Commission. A motion was made, seconded and unanimously adopted that such dissents should not be indicated in the recommendation but that a statement should be added to the Annual Report stating in substance: In some instances one or more members of the Commission may dissent to all or part of a recommendation submitted to the Legislature by the Commission. However, as a matter of policy, such dissent is not reflected in the recommendation submitted by the Commission.

E. October Meeting Schedule: The Commission meeting for October is scheduled for: October 21, 22, 1960 (San Francisco).

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F. Resignation of Leonard J. Dieden: Prior to adjournment of its meeting, the Commission extended its congratulations to Leonard J. Dieden upon his appointment as a Superior Court Judge, and expressed its appreciation for his material contribution toward the activities of the Commission.

II. CURRENT STUDIES

A. Study No. 32 - Arbitration: The Commission considered Memorandum No. 59(1960) containing the proposed recommendation and draft statute on arbitration. After the matter was discussed, the following changes were made:

Draft Statute

Section 1280. Subdivision (3) was revised to read: "'written agreement' shall be deemed to include a written agreement which has been extended or renewed by an oral or implied agreement." The recommendation referring to this matter is to be revised accordingly.

A definition of an award, stating that "award" includes an award made pursuant to an agreement not in writing, is to be added to this section.

Section 1282. The proposed revision to Section 1282 was approved with the following changes:

In subdivision (3) the word "a" was substituted for "another" in the second line and in the fifth line the words "that the" were deleted and the words "but stay its order" were substituted for "be stayed."

Section 1283. The phrase "made within the time provided to demur to the pleading in which the issue is raised" was deleted in both subdivisions (1) and (2). The phrase "or

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until such earlier time as the court specifies" was added to the end of both subdivisions (1) and (2).

Section 1284. In the fourth line of subdivision (2) the word "a" was substituted for "from" and the word "associations" was made singular.

Section 1285. Subdivision (4) was added, providing: "If there is no neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the arbitrators."

Section 1286. In subdivision (1) the word "notice" was substituted for "notification."

Section 1290. Subdivisions (2) and (3) are to be revised by the staff to make clear when a written application to modify or correct an award or an objection thereto must be made and when a copy of the application or modification must be served on opposing parties.

Section 1292. The words "and is pending" were added to the end of subdivision (1).

Subdivision (2) was deleted in view of the definition of "award" added to Section 1280.

In subdivision (3) the words "allege the substance of" were substituted for "set forth in."

The phrase "if in writing or a statement of the substance of the agreement to arbitrate if the agreement is not in writing" was deleted from subdivision (3)(a).

Section 1293. In subdivision (3) in the sixth line the word "original" was added before "arbitrators" and the words "who made the award" were deleted. In the seventh line the words "period of" were added before "time."

Section 1295. The first three sentences were designated as subdivision (1). The third sentence was revised to add the words "except as provided in subdivision (2) of this section" before "it may be enforced" in the sixth line. The last sentence of the section was designated as subdivision (2) and is to be revised to read substantially as follows:

An award which determines a controversy, that if determined by a contract between the parties would require approval of the court, shall be deemed to be such a contract.

Section 1295.5. Section 1295.5 was approved as drafted.

Section 1296. Subdivision (3) was revised to read as follows:

Any petition made after the commencement of arbitration proceedings shall be filed in the county where the arbitration is being or has been held, or, if not held exclusively in any one county of this State, then such petition shall be filed as provided in subdivision (1) of this section.

Section 6 - Effective Date. The effective date provision is to be revised to make the entire arbitration statute, except for the provision relating to jurisdiction over out-of-state parties, applicable to all contracts, including those executed prior to the effective date of the arbitration statute. The provision conferring personal jurisdiction over out-of-state parties if they execute a contract in California

providing for arbitration in California is to be applicable only to contracts executed on or after the effective date of the statute.

Recommendation

Page 1. A brief comment is to be added stating that the Commission has studied the Uniform Arbitration Act and has concluded that the more desirable approach would be to enact an arbitration statute more in line with the existing California law.

Page 2. The last sentence of paragraph 1 is to be more fully developed pointing out the reasons why the distinction between the arbitration and appraisal agreements should be abolished.

Paragraph 2 is to be more fully developed. It was suggested that the arguments used in the study relating to this matter be incorporated in the recommendation.

The word "exclusion" was substituted for "provision" in lines 4, 6 and 8 of paragraph 2.

An example of an agreement providing for the performance of a mental task is to be added after the second sentence in paragraph 2.

The first sentence of paragraph 3 is to be rephrased to conform to the revision made to Section 1280(3).

Page 3. Line 2 was revised by substituting "enforceable only if they are" for "required to be."

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In the last sentence of paragraph 1 the phrase "dispute sought to be arbitrated" was substituted for the words "parties' contentions."

Page 4. The word "also" was inserted after the word "may" in line 2. The first phrase of paragraph 3 was revised to read "Upon a petition to compel arbitration, the court"

Paragraph 4 is to be rewritten to conform to the alterations made in Section 1283 of the statute.

In paragraph 5, the word "statutes" was made singular.

Page 5. The word "uncertain" was substituted for "vague" in the fifth line of paragraph 1 and the word "meet" was substituted for "challenge" in the third line of paragraph 3.

Page 6. The words "Unless the parties have otherwise agreed" were added at the beginning of paragraph 4.

The third sentence of paragraph 4 was revised to read: "It should be made clear that a party may not prevent arbitration merely by staying away from the hearing."

The phrase "unless the parties have otherwise agreed" was added to the end of the first sentence of paragraph 5.

Page 8. Paragraph 1 is to be revised to indicate that the shorter time limit provided for attacking an award places the burden of taking action upon the person asserting that the award is defective.

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Page 9. Paragraph 4 is to be revised to indicate that a rehearing may be granted before the original arbitrators only if the parties consent.

Other minor changes suggested by the Commissioners were to be submitted to the staff.

It was agreed that the study, recommendation and draft bill relating to arbitration should be sent to the State Bar for its views.

B. Study No. 36(L) - Condemnation: The Commission considered Memorandum No. 52(1960) and Memorandum No. 64(1960) both relating to Apportionment of an Award, Memorandum No. 60 (1960) relating to Pre-trial and Discovery and the research studies on these subjects prepared by the Commission's research consultant. The following actions were taken:

Memorandum No. 52(1960) - Apportionment of Award

A motion was made by Mr. Bradley and seconded by Mr. Stanton to approve the principle that the valuation of property should be made as if there were no separate interests therein. The motion did not carry:

Aye: Bradley, McDonough, Selvin, Stanton.

No: Cobey, Dieden, Gustafson, Spencer.

Not Present: Grover.

A motion was then made by Senator Cobey and seconded by Mrs. Spencer to approve the principle that each separate interest in the property should be valued separately. The motion did not carry:

Aye: Cobey, Dieden, Gustafson, Spencer.

No: Bradley, McDonough, Selvin, Stanton.

Not Present: Grover.

After a motion for reconsideration of the matter carried, a motion was made to approve the principle that each interest in the property is to be valued separately, and, on motion, a

single trial to determine the value of all interests in a single parcel is to be mandatory. The motion carried:

Aye: Cobey, Dieden, Gustafson, Selvin, Spencer.

No: Bradley, McDonough, Stanton.

Not Present: Grover.

A motion carried approving the principles that when there is a partial taking of leasehold property, the rental obligation allocable to the part of the property taken is terminated upon such taking. The consultant's recommendation that the lease be terminated if the material inducement to the lessee to enter into the lease is taken was also approved.

Memorandum No. 60(1960) - Pre-Trial and Discovery

A motion was made by Senator Cobey and seconded by Mr. McDonough to require a compulsory exchange of reports by the condemner and condemnee prior to pretrial, and to provide that no evidence of value not contained in the reports is admissible (except the owner's testimony) except for good cause shown. The motion did not carry:

Aye: Cobey, McDonough.

No: Bradley, Dieden, Gustafson, Selvin, Spencer, Stanton.

Not Present: Grover.

A motion was then made by Mr. Selvin and seconded by Mr. Dieden to approve the principle that any facts having any bearing on the case should be made available by deposition. (Use of the general format of the Wisconsin statute was

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suggested.) The motion carried:

Aye: Cobey, Dieden, McDonough, Selvin, Stanton.

No: Bradley.

Pass: Gustafson, Spencer.

Not Present: Grover.

A motion was made by Mr. McDonough and seconded by Senator Cobey to disapprove the requirement that the condemner make an offer to the condemnee prior to the commencement of the condemnation proceedings. The motion carried:

Aye: Cobey, Gustafson, McDonough, Selvin, Stanton.

No: Bradley, Dieden, Spencer.

Not Present: Grover.

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C. Study No. 37(L) - Claims Against Public Officers and Employees: The Commission considered Memorandum No. 58(1960) and its supplements, a copy of a revision to the claims recommendation suggested by Mr. Stanton (7/20/60) and a copy of an additional sentence suggested by Professor Van Alstyne to be added to Section 4 of the proposed claims statute. After the matter was discussed action was taken on the following:

Additional Sentence to be Added to Section 4 of Proposed Statute - Effective Date Provision

A motion was made, seconded and adopted to disapprove the addition of the proposed additional sentence to Section 4. The Commission believes that the proposed addition is not necessary.

Supplement to Memorandum No. 58(1960) - Revision to Government Code Section 1956

A motion was made, seconded and adopted:

(1) To make no reference in the recommendation in regard to the necessary technical amendments that should be made in Section 1956 of the Government Code.

(2) Not to introduce a bill amending Section 1956.

(3) To send the necessary material to the Legislative Counsel as a request of Mr. Bradley so that he can introduce such a bill as his own. The Legislative Counsel should be advised not to deliver the bill to Mr. Bradley until January 1961.

Memorandum No. 58(1960) and Mr. Stanton's Suggested Revision
of Recommendation

Draft Statute. The last line of Section 4 of the proposed statute was revised to read: "cause of action that is barred on the effective date of this act."

Letter of Transmittal. Approved without change.

Recommendation. A paragraph submitted by Mr. McDonough (Exhibit I) as a substitute for the first paragraph of paragraph "2" of the recommendation was substituted with the following changes:

(1) The following is to be substituted for the second sentence contained in Mr. McDonough's suggested substitution:

The recognized justification for a claims statute is that it is designed to give prompt notice of a potential liability to a defendant whose unique situation requires this preferred treatment.

(2) The word "defendant" was substituted for "private citizen" in the fourth line from the bottom of page 7.

(3) The next to the last sentence of the paragraph was revised to read:

Of course, in some instances a public officer or employee may be held liable even though he did not have immediate personal knowledge of the injury.

The revision of the recommendation suggested by Mr. Stanton was adopted with the following changes and is to be included at the end of the recommendation as paragraph 6:

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(1) In the second paragraph, the phrase "or their insurance carriers" was deleted.

(2) The last sentence of the second paragraph was deleted and the first paragraph on page 3 of the recommendation (except for the first sentence on page 3 of the recommendation) was substituted in its stead.

(3) The last paragraph on page 2 of Mr. Stanton's suggested revision was deleted; but it was suggested that Mr. Stanton prepare an additional paragraph to be added at the end of the recommendation that would point out in substance that a study of the law in this area may be desirable but that the Commission believes that such a study goes beyond the scope of its assignment to study and recommend needed revisions of the law relating to the presentation of claims against public employees.

(4) The first paragraph of Mr. Stanton's suggested revision is to have footnotes identifying the various statutes referred to.

The first sentence on page 3 of the recommendation was deleted and the remaining portion of the paragraph was consolidated with Mr. Stanton's revision, which is to be new paragraph 6. (See paragraph (2) supra.)

Paragraph 5 of the recommendation should indicate New York as being the one other state that has enacted a general

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personnel statute and a footnote should be added to refer to the research consultant's discussion of the New York statute.

A motion was made, seconded and unanimously adopted to approve the recommendation as revised.

Study

It was agreed that the study should be edited to delete portions relating to the alternative proposal made by Professor Van Alstyne which was not accepted by the Commission.

It was agreed that the study, recommendation and draft bill relating to claims against public officers and employees should be sent to the State Bar for its views.

D. Study No. 38 - Inter Vivos Rights: The Commission considered Memorandum No. 62(1960) and its first and second supplement and a proposed statement to be added to the recommendation relating to the constitutionality of the proposed legislation (7/14/60). After the matter was discussed action was taken on the following:

Memorandum No. 62(1960) and the First Supplement

(1) Divorce. The following principles were adopted:

(a) There should be no requirement that the person owning quasi-community property be domiciled in California.

(b) For purposes of division of divorce, quasi-community property is to be treated the same as community property.

(2) Support, attorneys' fees and costs. The proposed amendments to Section 141 and 142 of the Civil Code contained in Exhibit I were approved. Sections 143 and 176 of the Civil Code are also to be amended to provide that quasi-community property is to be treated like community property.

(3) Homestead. The principle to treat homestead property the same as community property was approved. The proposed revision to Section 661 of the Probate Code was approved.

(4) Gift tax. The principle that the nonresident should be treated the same as a resident for gift tax purposes was approved.

Letter of Transmittal

The words "during marriage" were inserted in the third line after "decedent" and the words "legislative session" were substituted for the word "time" in the fifth line.

Draft Statute

Section 1237.6 - Civil Code. The word "real" was inserted before the word "property" in subdivision (1).

Section 146 - Civil Code. This section is to be revised to conform to the action taken earlier in regard to division of quasi-community property for purposes of divorce.

Section 15303.5 - Revenue and Taxation Code. The phrase "(commencing at Section 13301)" was added after "Part 8" in the fifth line.

Section 15306.5 - Revenue and Taxation Code. This section was deleted and Section 15306 is to be revised to state that the person claiming property is quasi-community property has the burden of proving it is such.

A motion was then made by Mr. McDonough and seconded by Senator Cobey to approve the draft bill as revised. The motion carried:

Aye: Bradley, Cobey, Dieden, Grover, Gustafson, McDonough,
Spencer, Stanton.

No: Selvin.

Recommendation

Page 1. The first portion of the second paragraph was revised to read:

The first legislation enacted to deal with property brought here by married persons domiciled elsewhere at the time of its acquisition was a 1917 amendment. . . .

Page 3. The second sentence of the first paragraph was deleted and the substance of the following is to be added in its place:

Furthermore, experience has shown that the omnibus approach that the legislature has tried before raises grave doubts as to the constitutionality and other practical difficulties.

A brief statement concerning the constitutionality of the Commission's recommended legislation is to be added after the first sentence of the second paragraph.

Page 4. The second line of paragraph 2 was revised to read:

The principal effect of this recommendation is that upon the death of the acquiring spouse a quasi-community property homestead will vest in his surviving spouse or children rather than in his heirs or devisees.

Page 5. The second sentence of the first paragraph is to be revised to conform to action taken earlier.

Respectfully submitted,

John H. DeMouly
Executive Secretary