

Mtg.

Place of Meeting
State Bar Building
(Hearing Room)
601 McAllister Street
San Francisco

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

October 21-22, 1960

Friday, October 21 (meeting starts at 9:30 a.m.)

1. Minutes of September 1960 Meeting (enclosed)
2. Election of Chairman
3. Study No. 36(L) - Condemnation
 - See: Memorandum No. 87(1960) (evidence)(enclosed)
 - Memorandum No. 88(1960) (moving expenses and incidental business losses)(enclosed)
 - Memorandum No. 89(1960) (taking possession and passage of title)(enclosed)
 - Memorandum No. 78(1960) (apportionment of award)(sent 9/6/60)
 - Revised Supplement to Memorandum No. 78(1960)(enclosed)
4. Study No. 38 - Inter Vivos Rights
 - See: Memorandum No. 90(1960)(sent 10/5/60)
 - First Supplement to Memorandum No. 90(1960)(sent 10/5/60)
 - Second Supplement to Memorandum No. 90(1960)(enclosed)
5. Study No. 23 - Rescission of Contracts
 - See: Memorandum No. 91(1960)(sent 10/5/60)

Saturday, October 22 (meeting starts at 9:00 a.m.)

6. Study No. 32 - Arbitration
 - See: Memorandum No. 92(1960)(to be sent)
7. Study No. 34(L) - Uniform Rules of Evidence
 - See: Memorandum No. 83(1960)(privileges)(sent 8/31/60)
 - Various Supplements to Memorandum No. 83 (sent 9/8/60, 9/16/60 and other dates)

MINUTES OF MEETING

of

October 21 and 22, 1960

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on October 21 and 22, 1960.

Present: Roy A. Gustafson, Chairman
John R. McDonough, Jr., Vice Chairman
George G. Grover
Herman F. Selvin
Thomas E. Stanton, Jr.
Ralph N. Kleps, ex officio

Absent: Honorable Clark L. Bradley
Honorable James A. Cobey
Vaino H. Spencer

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

Mr. Stanley Tobin of the law firm of Hill, Farrer & Burrill of Los Angeles, research consultant for Study No. 36(L) - Condemnation, was present during part of the meeting on October 21.

Messrs. Holloway Jones and Robert F. Carlson, from the Department of Public Works, were present during a part of the meeting on October 21.

A motion was adopted to approve the minutes of the meeting held on September 26, 27 and 28, 1960, after the following changes were made:

Page 1. "Mr. De Martini" was changed to read: "Joseph De Martini" and "Chuck Spencer" was changed to read: "Charles Spencer."

Page 11. The word "subdivision" in the footnote was made plural.

Page 12. The word "proposed" was added after "sentence" in the first line.

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Page 13. The word "is" was substituted for "was" in the sixth line.

Page 15. A semicolon was substituted for the comma after "staff" in the first line of the first paragraph under subtitle Section 1270.3 and the word "a" was substituted for "the" in the first line of the second paragraph under subtitle Section 1270.3.

Page 19. The word "the" which preceded "discretion" in the sixth line was deleted.

Page 21. The capital "P" in the word "Particularly" in the ninth line was changed to lower case.

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I. ADMINISTRATIVE MATTERS

A. Resignation of Roy A. Gustafson: The Commission noted that its Chairman, Mr. Roy A. Gustafson, had resigned as a member of the Commission, effective November 1, 1960. The Commission expressed to him its sincere appreciation for his leadership and material contribution toward the activities of the Commission.

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B. Election of Chairman: The election of chairman was deferred to a time when a fuller representation of the Commission will be present.

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C. Letter of Transmittal of Commission's Printed Reports: It was agreed that the printed reports of the Commission should be dated as of the month that the Commission approves its recommendation for printing and that the names of the members of the Commission at the time of such approval should be listed in the Letter of Transmittal.

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D. Scheduled Commission Meetings: Future Commission meetings
are scheduled for:

November 18 in San Francisco. (meeting to begin at 9 a.m.)

December 16 and 17 in Los Angeles.

II. CURRENT STUDIES

A. Study No. 23 - Rescission of Contracts: The Commission considered Memorandum No. 91(1960) and the attached recommendation and proposed legislation. After the matter was discussed the following action was taken:

Draft Statute

Section 1689 - Civil Code. A motion was adopted deleting the phrase "if the party against whom rescission is sought can be restored to substantially the same position as if the contract had not been made." Mr. Selvin voted in opposition to this motion.

The first paragraph of subdivision (b) was then revised to read:
"A party to a contract may rescind the contract in the following cases:"

Section 1691 - Civil Code. In subdivision (2) the word "or" was substituted for "and" in both the first and fourth lines; and the words "or both" were added after "offer" in the fourth line.

Section 598 - Code of Civil Procedure. The first sentence was revised to read:

Where a release is pleaded as a defense to a cause of action, it shall first be determined whether the release is valid and constitutes a defense to the cause of action and whether it has been rescinded pursuant to the provisions of Chapter 2 (commencing with Section 1688) of Title 5 of Part 2 of Division 3 of the Civil Code.

Recommendation

Page 1. The first paragraph was tabulated, adding "(1)" before the sentence beginning "Sections 1688 through 1691. . . ." and adding "(2)" before the sentence beginning "Sections 3406 through 3408. . . ."

Page 3. The words "For example" were added before "Although" in the third line of the first full paragraph.

Page 4. The word "Since" was substituted for "As it is the existence of" in the sixth line of the first full paragraph.

Page 5. The following language is to be added in an appropriate place in Section 3:

It should be noted that, under the statute recommended by the Commission, the service of a pleading seeking rescissionary relief may constitute an offer to restore consideration which may be accepted by the other party whether or not the serving party so intends.

The following sentence was added to the footnote:

Accordingly, the Commission has not considered the possible elimination or revision of existing grounds for rescission or the addition of new ones.

Page 6. The words "against a fraudulent defendant" were deleted from the second line.

The staff is to make any further revisions required as a result of the revision of the statute.

A motion was adopted approving the recommendation and draft statute as revised and authorizing the Executive Secretary to proceed with the printing of the recommendation and the study.

B. Study No. 32 - Arbitration: The Commission considered Memorandum No. 92(1960) and the attached draft of the Commission's tentative statute with changes recommended by the staff. After the matter was discussed the following action was taken:

Section 1280. In subdivision (1) the proposed addition of the phrase ", but is not limited to," was approved.

In subdivision (3) the proposed addition of "or both" was approved.

The proposed deletion of subdivision (5) was disapproved.

Section 1282. In subdivision (1) the proposed changes were approved except for the phrase "Subject to subdivision (2) of this section" which was deleted. Mr. Selvin voted in opposition to the addition of the reference to "such controversy."

Proposed subdivision (2) was disapproved.

The changes proposed in subdivision (3) were approved.

A motion to approve proposed subdivision (5) did not carry.

Aye: McDonough, Stanton.

No: Grover, Selvin.

Pass: Gustafson.

Not Present: Bradley, Cobey, Spencer.

Section 1283. The proposed substitution of the words "a controversy" for "an issue" was approved and the words "which is an issue" were added immediately following "controversy" in subdivisions (1) and (2). Conforming amendments are to be made in subdivisions (3) and (4).

The proposed addition of the words "of this State" in subdivisions (1)

and (2) was approved.

Section 1284. The proposed addition of the phrase "in accordance with the agreed method to fullest extent possible" in subdivision (1) was disapproved.

The proposed addition of the phrase "and the method provided under subdivision (1) of this section cannot be followed" in subdivision (2) was disapproved.

The proposed deletion of the word "a" in the fifth line and the proposed deletion of the phrase "by agreement or lot from the nominees" was approved, and the phrase "whether or not from the nominees" was added after the word "arbitrator" in the seventh line. Mr. Stanton voted in opposition to the addition of this phrase.

Section 1286. A motion to delete the requirement that the notice must be sent by registered or certified mail did not carry.

Aye: McDonough, Selvin, Stanton.

No: Grover, Gustafson.

Not Present: Bradley, Cobey, Spencer.

The proposed addition in subdivision (3) of the sentence "On request of any party, the testimony of witnesses shall be given under oath." was approved.

The proposed changes in subdivision (5) were also approved.

Subdivision (6) was approved as revised:

If a neutral arbitrator intends to base an award upon information relating to the controversy other than that obtained at the hearing, he shall disclose such information

to all parties to the arbitration and give the parties an opportunity to meet it.

Mr. Selvin voted in opposition to this revision.

Section 1287. The proposed changes in Section 1287 were approved.

Mr. Selvin voted in opposition to these changes.

Section 1288. The proposed changes in Section 1288 were approved.

A motion to broaden subdivision (3) to permit the use of depositions for discovery in arbitration proceedings did not carry.

Aye: McDonough, Stanton.

No: Grover, Gustafson, Selvin.

Not Present: Bradley, Cobey, Spencer.

Section 1289. The proposed changes in subdivision (3) were not approved.

Section 1290. The proposed changes in Section 1290 were approved.

Section 1291. The proposed changes in Section 1291 were approved.

Chapter 4 - Enforcement of Awards. The chapter was not considered in detail. However, the general plan for review and enforcement of awards proposed by the State Bar Committee on Arbitration was considered and not approved. The Commission's general plan for review and enforcement of awards is to be modified as follows:

A motion was adopted to extend the one-year period to file a petition to confirm an award to four years.

The staff was directed to draft a provision to provide that when a person not a party to an arbitration has been named in the petition to

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confirm the award, that person may, in opposition to the petition to confirm, raise the objection that he is not bound by the award.

A motion was adopted to approve the principle that when a petition to vacate, modify, correct or confirm the award is presented, the court must either confirm the award (as originally made or as modified by the court) or vacate the award. Mr. McDonough voted in opposition to this motion.

C. Study No. 36(L) - Condemnation: The Commission had before it Memorandum No. 87(1960) - Evidentiary Problems, Memorandum No. 88(1960) - Moving Expenses and Incidental Business Losses, and Memorandum No. 89(1960) - Taking Possession with the proposed recommendations and statutes attached. After the matter was discussed the following actions were taken:

Memorandum No. 87(1960) - Evidentiary Problems

Draft Statute

Section 1248. The second sentence of subdivision (1), beginning "The owner of the property or property interest. . .", was relocated as the third sentence of subdivision (1).

Section 1248.2. The words "to be taken or injuriously affected" were added after "property interest" in the eighth line of the first paragraph of Section 1248.2.

A motion to add "which included comparable property" after "contract to sell" in subdivision (2) did not carry.

The following was added as subdivisions (3) and (4):

(3) The rent reserved and other terms of any lease which included the property or property interest to be taken or injuriously affected or any part thereof which was in effect within a reasonable time before the date of valuation.

(4) The rent reserved and other terms of any lease of comparable property if the lease was freely made in good faith within a reasonable time before or after the date of valuation.

Section 1248.3. The following was also added as a new subdivision to Section 1248.3:

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The capitalized value of the income or rental from any property other than the property to be taken or injuriously affected.

A motion was then adopted to add the following as another subdivision of Section 1248.3:

The influence upon such amount of any noncompensable items of damage or injury.

Mr. Grover voted in opposition to this motion.

Recommendation

Page 1. The words "less depreciation" in the seventh and eighth lines from the bottom of the page were relocated after the word "cost" in the seventh line from the bottom of the page.

The last sentence was revised as follows:

Restrictive rules of this sort, which prevent witnesses from revealing all that they rely on to determine value in the market place, have been justly criticized by lawyers, judges and appraisers.

Page 2. Footnote 1 was deleted.

Page 3. The staff is to revise Section 2 to remove some of the references to "on direct examination."

Page 4. The staff is to add language to Section 4 to indicate that personal considerations may not be relied on to determine value and to indicate that noncompensable injuries suffered because of the exercise of the police power may not be relied on to determine value.

Page 5. The last clause of paragraph (b) was relocated at the end of the second sentence of paragraph (b).

The portion of the last sentence of paragraph (c) beginning "the

considerations. . ." was deleted and the following was substituted:

. . .however, it should be admissible for the reasons that admissions are admissible generally.

Page 6. The first portion of paragraph (e) was revised as follows:

(e) Opinions as to the value of comparable property should be excluded from consideration in determining the value of property subject to condemnation on the principle of remoteness because their consideration would require. . . .

A motion was then adopted approving the recommendation and the draft statute as revised and authorizing the Executive Secretary to proceed with the printing of the recommendation and the study.

Memorandum No. 88(1960) - Moving Expenses and Incidental Business Losses

Draft Statute

Section 1270. The word "partnership" was added after "association" in subdivision (3) and the word "removing" was added after "dismantling" in subdivision (5).

Section 1270.3. The phrase "Subject to subdivision (2) and (4) of this section:" was deleted and subsections (a) and (b) were renumbered as subdivisions (1) and (2) respectively with the remaining subdivisions renumbered accordingly.

Section 1270.4. The phrase "Unless the amount agreed upon by the parties" is to be added to subdivision (1) if the staff determines that it is necessary.

Subdivision (1)(d) was revised to read: "An itemized statement of the costs incurred."

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Subsections (e) and (f) were then added to read as follows:

(e) The amount claimed.

(f) That the costs claimed are reasonable and were necessarily incurred.

Subdivision (2) was amended to correspond with subdivision (1) as revised.

Subdivision (3) was deleted from Section 1270.4 and added as Section 1270.5. The first two sentences were revised to read as follows:

The acquirer may, within 20 days after service of a memorandum under Section 1270.4, serve and file a notice on the motion to have the amount of reimbursement to be made pursuant to this title determined by the court. Not less than 10 days notice of the hearing on the motion shall be given to the claimant, and the notice shall state the acquirer's objections to the amount claimed in the memorandum or other basis for the motion.

The word "costs" was deleted from the fifth line from the top of the page, and "amount of reimbursement" was substituted for it.

Section 1270.6. The title is to be revised to confine its procedures to eminent domain proceedings, and a new section is to be added as Section 1270.6 authorizing payment of moving expenses pursuant to an agreement if the real property is not acquired by eminent domain.

Section 1248.5. The words "if the court finds" were deleted from the third line. The reference to "moving, transporting, storing or relocating" is to be revised to include all expenses that may be reimbursed under Title 7a.

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Recommendation

It was agreed that the study on moving expenses should not include the study on incidental business losses and that all references in the recommendation to incidental business losses should be deleted.

Page 2. The word "unsatisfactory" was substituted for "not" in the second line and the words "difficult if not" were added before "impossible" in the fifth line.

A motion was then adopted approving the recommendation and the draft statute and authorizing the Executive Secretary to proceed with the printing of the recommendation and the study.

Memorandum No. 89(1960) - Taking Possession

Draft Statute

Section 1243.4 - Code of Civil Procedure. A motion was adopted approving Section 1243.4.

Section 1243.7 - Code of Civil Procedure. The word "respective" was deleted from the seventh line of subdivision (1).

In subdivision (2) in both the second and third lines the words "his particular" were substituted for "the respective," and in the third line the word "final" was substituted for "total." The words "such amount as is fixed by the court but not to exceed" were added between "in" and "double" in the seventh line of subdivision (2).

Section 1255(a) - Code of Civil Procedure. The words "to his detriment in justifiable reliance upon" were added after "substantially

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changed" in subdivision (2).

A sentence is to be added to subdivision (4) to provide in substance that the risk of loss shifts to the condemner in immediate possession cases on the date the condemner is authorized to take possession whether it does so or not.

Section 5096 - Revenue and Taxation Code. It was agreed that the sections relating to taxation should be introduced as a separate bill.

Subdivision (2) is to be redrafted to state more clearly that only the portion of the taxes allocable to the portion of the fiscal year beginning on the date of taking may be refunded.

Constitutional Amendment. The words "and upon such security" were added after the word "procedure" in the thirteenth line on page 37.

A motion was adopted approving the deletion of the entire second paragraph. It was agreed that in the event the proposed Constitutional amendment is approved by the Legislature in the 1961 Session and the statute is not, the situation may be corrected at the 1962 Session.

A motion was adopted approving the recommendation and the draft statute and authorizing the Executive Secretary to proceed with the printing of the recommendation and the study.

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D. Study No. 38 - Inter Vivos: The Commission considered:

Memorandum No. 90(1960) and the attached recommendation and draft statute and copy of a letter (dated September 22, 1960) from Professor Harold Marsh, Jr. to the Executive Secretary.

First Supplement to Memorandum No. 90(1960).

Second Supplement to Memorandum No. 90(1960) with the attached copy of a letter (dated October 10, 1960) from Mr. J. D. Lear, Assistant Chief, Inheritance Tax Attorney.

The following action was taken:

A motion was adopted approving the principle that a transfer of quasi-community property into property held by the spouses as joint tenants or as tenants in common is to be excluded from the gift tax. The text of the recommendation and the statute (Section 15303.5 of the Revenue and Taxation Code) are to be revised to reflect this decision.

Section 15303.5 - Revenue and Taxation Code. The word "separate" was deleted from the sixth line.

Recommendation

Page 6. A comma was added after the word "acquisition" in the eighth line and the word "being" was deleted from the ninth line.

Page 8. The first portion of the third sentence of the first full paragraph is to be revised with the words ", it is far from clear" deleted. The next sentence was revised to state the substance of the sentence in affirmative language, rather than as a question. The last sentence

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beginning on the next to the last line on the bottom of the page and continuing on the first two lines on page 9 was deleted.

Page 15. The word "satisfied" was substituted for "convinced" in the fourth line of the first full paragraph.

Page 17. The Commission discussed footnote 9, but took no action to change the wording of the footnote. It was suggested that this footnote be reconsidered if any member of the Commission submits an alternative footnote.

A motion was adopted approving the recommendation (including the draft statute) as revised and authorizing the Executive Secretary to send the recommendation to the printer.

Respectfully submitted,

John H. DeMouly
Executive Secretary