

Place of Meeting

State Bar Building
1230 West 3rd Street
Los Angeles

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

Thursday, Friday and Saturday
December 15-17, 1960

Thursday, December 15 (meeting starts at 9:30 a.m.)

1. Minutes of November 1960 Meeting (sent 11/28/60)
2. Election of Chairman
3. Study No. 57(L) - Bail

Approval of partial payment for research study

4. Study No. 32 - Arbitration

See: Memorandum No. 100 (1960)(to be sent)
Uniform Arbitration Act (you have this)
Consultant's research study (you have this)

5. Study No. 40 - Notice of Alibi

See: Memorandum No. 103 (1960)(sent 11/30/60)
Recommendation dated September 19, 1960 (sent 11/30/60)

Friday, December 16 (meeting starts at 9:00 a.m.)

6. Study No. 36(L) - Condemnation

See: Memorandum No. 105 (1960)(revisions of approved recommendations)
(to be sent)
Memorandum No. 97 (1960)(pretrial conferences and discovery)
(sent 11/9/60)
Supplement to Memorandum No. 97 (1960)(sent 11/10/60)
Second Supplement to Memorandum No. 97 (1960)(to be sent)
Consultant's Study on Pretrial Conferences and Discovery
(you have this)

Memorandum No. 78 (1960)(apportionment of award)(sent 9/22/60)
Revised Supplement to Memorandum No. 78 (1960)(sent 10/13/60)
Consultant's Study on Apportionment of Award (you have this)

Memorandum No. 101 (1960)(date of valuation)(enclosed)
Consultant's Study on Date of Valuation (you have this)

Saturday, December 17 (meeting starts at 9:00 a.m.)

7. Determination of Commission Bills to be Introduced in Assembly and in Senate.

See: Memorandum No. 103 (1960)(to be sent)

8. Establishment of Priorities for 1963 Legislative Program.

See: Memorandum No. 102 (1960)(enclosed)

9. New Topics For Study by Law Revision Commission.

See: Memorandum No. 104 (1960)(enclosed)

10. Study No. 34(L) - Uniform Rules of Evidence

See: Memorandum No. 83 (1960)(privileges)(sent 8/31/60)
Various Supplements to Memorandum No. 83 (1960)(sent 9/8/60,
9/16/60 and other dates)

MINUTES OF MEETING

of

December 15, 16 and 17, 1960

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on December 15, 16 and 17, 1960.

Present: Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
Joseph A. Ball
Honorable Clark L. Bradley
George G. Grover
Vaino H. Spencer (16th and 17th only)
Thomas E. Stanton, Jr.
Ralph N. Kleps, ex officio

Absent: Honorable James A. Cobey
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Messrs. John H. DeMouilly and Joseph B. Harvey, members of the Commission's staff, were also present.

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

Messrs. Robert Carlson and Charles Spencer of the Department of Public Works were also present for part of the meeting.

The minutes of the meeting of November 18, 1960, were approved after the word "and" was inserted before the words "not included" at the end of the fourth line of the paragraph on Section 1255a on page 16 of the minutes.

I. ADMINISTRATIVE MATTERS

A. Election of Chairman: A motion was adopted to approve the principle that a member of the Commission who has been elected to an office for less than a full term may succeed himself in that office for a full term. Mr. Selvin was then elected Chairman for the remainder of the unexpired term of Mr. Gustafson.

B. Study No. 57(L) - Bail, Approval of Part Payment: The payment of \$1,000 to Mr. Stanley E. Cohen for the preparation of the study on Bail was approved. This payment is a part payment on the total contract sum of \$1,500. The balance will be paid after the performance of such further work as the Commission requires under the contract.

C. Future Meetings: Future meetings of the Commission are scheduled as follows:

January 13-14 (San Francisco)
February 10-11 (place not determined)
March 17-18 (place not determined)

D. Determination of Commission Bills To Be Introduced in Assembly and in Senate:

The following bills are to be introduced by Assemblyman Bradley:

- (1) Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere.
- (2) Rescission of Contracts.
- (3) Arbitration
- (4) Notice of Alibi

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The following bills are to be introduced by Senator Cobey:

- (1) Presentation of Claims Against Public Officers and Employees.
- (2) Survival of Actions.
- (3) Evidence in Eminent Domain Proceedings.
- (4) Reimbursement for Moving Expenses When Property Is Acquired for Public Use.
- (5) Taking Possession and Passage of Title in Eminent Domain Proceedings.

The Commission decided to defer a decision on whether its recommendation on The Right to Counsel and the Separation of the Delinquent from the Nondelinquent Minor in Juvenile Court Proceedings would be introduced in the Assembly or Senate. The Special Study Commission on Juvenile Justice has a recommendation covering the same matter and the Commission should know at its January meeting whether the Special Study Commission's bill will be introduced in the Senate or the Assembly.

II. Current Studies

A. Study No. 32 - Arbitration: The Commission considered Memorandum No. 100 and the material attached thereto. The following actions were taken:

Sections 1280-1284.4. The changes suggested by the staff and shown in strike out and underscore were approved except as noted specifically below:

Section 1280. The staff was directed to add a provision to define a "party to the arbitration" as a party to the arbitration agreement who is given notice of the arbitration hearing or who participates therein.

Subdivision (d) is to be revised to indicate that the parties referred to are the parties to an arbitration.

Section 1281.2. The reference to "party" in the first line was revised to "party to the arbitration agreement". The references to "parties" in the fourth line of the first paragraph and in the second line of the last paragraph were revised to "parties to the court proceeding".

Section 1281.4. The reference to "party" in the first line of page 4 is to be revised to refer to a party to the pending judicial action or proceeding.

Section 1281.6. The first paragraph of this section is to be revised to contain the following principle: If the arbitration agreement provides a method of appointing an arbitrator, such method shall be followed. If the arbitration agreement does not provide a method, the parties to the arbitration may agree on a method of appointing an arbitrator, which method shall be followed. In the absence of any such

agreement, the court shall appoint the arbitrator.

The reference to "parties" in the third line of the second paragraph of the section was revised to refer to "parties to the court proceeding."

Section 1282. The introductory sentence is to be revised to contain the following principle: The arbitration agreement should control on all matters covered by the section. If the arbitration agreement contains nothing relating to these matters, the parties to the arbitration may control all matters covered by the section by their own agreement. In the absence of any such agreement, the statute controls.

Section 1282.2. The introductory clause is to be revised to embody the same principle as contained in the introductory clause in Section 1282.

In subdivision (a) the reference to "parties" was revised to refer to "parties to the arbitration agreement who are necessary to a complete determination of the controversy." In all other subdivisions, references to "party" or "parties" are to be revised to refer to "parties to the arbitration."

Subdivision (e) was revised to read: "If a court has ordered a person to arbitrate a controversy, the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear."

Section 1282.6. The references to "party" were revised to refer to "party to the arbitration."

Section 1282.8. The reference to "party" in the first line was revised to "party to the arbitration."

Section 1283.2. The reference to "party" in the first line was revised to "party to the arbitration." The word "compelled" was substituted for the word "subpenaed" in the third line.

Section 1283.4. The references to "parties" were revised to "parties to the arbitration."

Section 1283.8. The words "to the arbitration" were added after "party" in the second line.

Section 1284 and Section 1284.2. All references to "party" are to be revised to refer to "party to the arbitration."

Section 1284.4. The introductory clause is to be revised to contain the same principle that is to be stated in the introductory clause of Section 1282. The last three lines were revised to read:

". . . , together with other expenses of the arbitration incurred or approved by the neutral arbitrator, not including counsel fees or witness fees or other expenses incurred by a party for his own benefit."

Sections 1285 - 1294.2. These sections were approved as drafted with the revisions indicated below.

Section 1285. The word "proceeding" was deleted after the word "arbitration" in the first line and in the fourth line.

Section 1285.4. The introductory clause was revised to read:

"A petition under this chapter shall:"

In subdivision (a), "Allege" was deleted and "Set forth" was substituted therefor. The words "petitioner denies the" were added between "the" and "existence" in the second line of subdivision (a).

Additional Provisions. A provision is to be added to the bill to require that a response set forth the matters required to be set forth in a petition except to the extent that such matters have previously been set forth in a petition filed in the proceeding. A provision is also to be added to require that a petition to vacate or to correct an award, or a response requesting such relief, set forth the grounds upon which relief is sought.

Section 1285.6. A comma was added after "corrected" at the end of the third line, and the word "or" was deleted at the beginning of the fourth line.

Section 1285.8. The section was renumbered 1286. The phrase, "Unless the award is vacated pursuant to Section 1285.8," is to be added at an appropriate place in the first two lines. The word "either" was inserted in the first line after "requesting." The words "or that an award be vacated" were inserted after "corrected" in the second line.

Section 1286. The section was renumbered 1285.8. The word "either" was inserted in the first line after "requesting." The words "corrected or that an award be" were inserted immediately before the word "vacated" at the beginning of the second line.

Subdivisions (c) and (e) are to be revised to indicate that the rights of an aggrieved party were substantially prejudiced.

Subdivision (d) was revised to read:

"The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon

the controversy submitted; or"

Section 1286.2. The words "to the court proceeding" were added after "parties" in the fourth line. In the second line of the second paragraph, "nevertheless" was added between "may" and "be." In the fourth line of the second paragraph, "but only if" was substituted for "unless." In the fifth line of the second paragraph, the phrase "to the arbitration agreement" was inserted after "parties" and the word "not" was inserted after the word "will."

Section 1286.4. The words "the proceeding" were substituted for "a petition" in the first line. Following the word "if" in the second line, the rest of the section was revised to read: ". . . the court determines that such person was not bound by the arbitration agreement and did not participate in the arbitration."

Section 1286.6. This proposed section was not approved.

Section 1287. This section was revised to read:

"An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration."

Mr. McDonough and Mr. Grover voted against the motion to adopt the above language in Section 1287.

Section 1288. The words "to confirm" were substituted for "requesting that" in the first line. The words "be confirmed" were deleted from the first line. The second sentence was revised to read:

"A petition to vacate an award or to correct an award shall

be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner."

Section 1288.2. The number "90" in the second line was changed to "100." The last line is to be revised to indicate that the time starts to run on the date the award was served on the respondent if he was a party to the arbitration and on the date the award was served on his representative if the respondent was not a party to the arbitration.

Section 1288.4. This section was deleted.

Section 1289. The words "this article" were substituted for "Sections 1288 and 1288.2" in the third line.

Section 1290. The words "the" and "of" were deleted from the second line. The words "or avoided" were added at the end of the section.

Section 1290.2. The words "a summary way in" were added immediately preceding the words "the manner" at the end of the first line.

Section 1290.6. The words "to the court proceeding" were added after "parties" in the last line of the section.

Section 1291. The section is to be revised to require the making of findings of fact and conclusions of law whenever an appealable order is made.

Section 1292. The word "proceedings" was deleted from the second line.

In subdivisions (a) and (b), the word "made" was substituted for the words "entered into." In subdivision (b), the words "to the court proceeding" were inserted before the word "party."

Section 1292.2. The word "proceedings" was deleted from the third line.

Section 1292.6. The words "this title" were added after the word "under" in the first line. The following words were deleted: "Section 1281.2, 1281.6 or 1284." The section is to be further revised to provide that once a petition is filed the court retains jurisdiction to determine any subsequent petition involving the same agreement and the same controversy and that any such subsequent petition shall be filed in that court.

Section 1292.8. This section was deleted.

Section 1293. Language is to be added to describe the purpose of the stay referred to in the section.

Section 1293.2. The last sentence was deleted.

Section 1294. The first line was revised to read:

"An aggrieved party may appeal from:"

Subdivision (b) was revised to read:

"An order dismissing a petition to confirm, correct or vacate an award."

Subdivisions (d) and (e) were deleted.

Additional Provisions. A provision is to be added to indicate that all nonappealable orders are reviewable on an appeal from an appealable order. A provision is also to be added to require that arbitration matters be given preference on the civil calendar.

Civil Code Section 1730. The amendment to Section 1730 of the Civil

Code was revised to read:

1730. [SALE-AT-A-VALUATION.] (1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person or a person appointed pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure relating to arbitration, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person or person appointed pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by Chapters 4 and 5 of this act.

Civil Code Section 3390. The revision of the amendment of this section as proposed by the staff was not approved.

Recommendation

The changes suggested by the staff were approved except as noted below.

Page 4. The commas in the ninth line were deleted.

Page 5. The word "it" was deleted from the first line. The word "arbitration" was deleted from the third line of paragraph 2, and the words "to arbitrate" were added after "agreement" in that line.

Page 6. The words "or is taking" were added after "taken" in the third line of paragraph 4. In paragraph 5, the capital letter was reduced to lower case in the word "The" immediately preceding "Federal

Mediation Service."

Page 9. The last three words of the sentence ending in the first line were changed to "may be revoked." In the third line, the words "waive their right to" were substituted for "may not."

Page 10. The "s" was removed from "limitations" in the tenth line of paragraph 1.

Page 11. The sentence immediately preceding paragraph 3 was deleted. The last two lines on the page were deleted and the following was substituted:

". . . by providing that whenever a petition relating to an award is filed the court must confirm the award as made unless it corrects and confirms the award, vacates the award or dismisses the proceeding."

Page 12. The first two lines were deleted. The words "When a court entertains any proceeding relating to an award" were substituted for "When it makes such a determination" at the beginning of line 3.

In paragraph 5, language is to be added to indicate that the rehearing may be held after expiration of the time provided in the original agreement only if the purpose of the original time limit would not be frustrated.

Page 15. The changes indicated by strike out and underline were not approved.

The staff was directed to redraft the statute to carry out the

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Commission's actions and to submit the redrafted statute to Commissioner McDonough for review. The recommendation is to be conformed to the redrafted statute. The staff was then directed to have the recommendation (including the redrafted statute) printed as the recommendation of the Commission.

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B. Study No. 40 - Notice of Alibi: The Commission considered Memorandum No. 103(1960). A motion was adopted to present the previously approved recommendation to the Legislature without modification. Mr. Grover voted against this motion.

C. Study No. 36(L) - Condemnation: The Commission considered Memorandum No. 105(1960) and the attached material. The following actions were taken:

Evidence Recommendation (draft of November 25, 1960). Paragraph (c) on page 6 of the recommendation was deleted and the suggested language on pages 1, 2 and 2a of Memorandum No. 105(1960) was substituted therefor.

Evidence Statute. Section 1248.2 (e) was revised to read:

(e) The capitalized value of the reasonable net rental value attributable to the property or property interest to be taken or injuriously affected, including reasonable net rentals customarily fixed by a percentage or other measurable portion of gross sales or gross income of a business which may reasonably be conducted on the premises, as distinguished from the capitalized value of the income or profits attributable to any business conducted thereon.

Section 1248.2 (f) was revised to read:

(f) The value of the property or property interest to be taken or injuriously affected as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.

Moving Expense Statute. The staff was directed to add a provision prohibiting reimbursement under the moving expense statute for the cost of replacing any item of property for which compensation was or may have been included in the original award.

Taking Possession Recommendation (draft of November 25, 1960).

The words "and special assessments" were deleted from the fourth line of the section entitled "Property Taxes" on page 8 of the recommendation.

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The staff was directed to revise the form of the introductory language on page 12 or to revise the language of the lead sentences in the following series.

In paragraph 3 on page 12, "from any improvement" was substituted for "to be" in the first line.

Taking Possession Statute (draft of November 25, 1960). The staff was directed to use the term "eminent domain proceeding" instead of "condemnation proceeding" throughout the statute.

In Section 1249.1, the word "entitled" was substituted for "authorized" in subdivision (c).

In Section 1254, "and" was substituted for "or" after the word "defendants" in the second line of subdivision (3) on page 26.

In Section 1255a, the words "and during trial" were added just after the word "trial" in the sixth line of subdivision (3) on page 30. In the fourth line on page 31, the word "entitled" was substituted for "authorized".

In Section 1255b, a paragraph (c) was added to subdivision (1) to read:

The date stated in an order authorizing the plaintiff to take possession as the date after which the plaintiff may take possession of the property.

A provision is also to be added to this section which would permit the value of the owner's occupancy and the value of any rents, issues and profits received by the owner from the property after the date interest commences to be offset against the condemner's liability for interest.

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Section 11 of the proposed statute was revised to read:

All sections of this act other than Sections 5 and 6 apply to all actions or proceedings in eminent domain pending in the courts at the time this act takes effect in which no order authorizing the plaintiff to take possession of the property sought to be condemned prior to the final order of condemnation has been made prior to the effective date of this act. Sections 5 and 6 of this act do not apply to any action or proceeding pending in the courts on such effective date.

The proposed changes in the constitutional amendment contained on pages 5 and 6 of Memorandum No. 105(1960) were approved, except that the words "except that the" were deleted from the seventh line of the amendment as it appears on page 5 of Memorandum No. 105(1960) and the word "The" inserted, and the last sentence of the proposed revision (on page 6 of the memorandum) is to be inserted before the sentence beginning in the third line from the bottom of page 5 of Memorandum No. 105(1960).

Memorandum No. 107(1960). No objection was made to the changes made by the staff in previously approved recommendations and set out in Memorandum No. 107(1960).

Respectfully submitted,

John H. DeMouilly
Executive Secretary