

Meeting

Place of Meeting

State Bar Building
601 McAllister
San Francisco

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

Friday and Saturday
January 13-14, 1961

Friday, January 13 (meeting starts at 9:30 a.m.)

1. Minutes of December 1960 meeting (enclosed) ✓
2. Establishment of Priorities for 1963 Legislative Program
See: Memorandum No. 102(1960) (this was sent to you for the December meeting)
3. New Topics for Study by Law Revision Commission
See: Memorandum No. 104(1960) (this was sent to you for the December meeting)
4. Request of Professor Van Alstye to Publish Claims Study
See: Memorandum No. 5(1961) (sent 12/30/60)
5. Study No. 32 - Arbitration
See: Memorandum No. 3(1961) (enclosed)
6. Study No. 37(L) - Claims
See: Memorandum No. 4(1961) (enclosed)
7. Study No. 34(L) - Uniform Rules of Evidence
See: Memorandum No. 1(1961) (sent 12/30/60)
Memorandum No. 2(1961) (sent 12/30/60)

Saturday, January 14 (meeting starts at 9:00 a.m.)

8. Study No. 36(L) - Condemnation

See: 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) (sent 12/9/60)

Third Supplement to Memorandum No. 97(1960) (sent 12/30/60)

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) (sent 12/9/60)

Consultant's Study on Date of Valuation (you have this)

Meeting

MINUTES OF MEETING

of

January 13 and 14, 1961

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on January 13 and 14, 1961.

Present: Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
Joseph A. Ball
George G. Grover
Sho Sato
Thomas E. Stanton, Jr. (January 14)

Absent: Honorable Clark L. Bradley
Honorable James A. Cobey
Vigino H. Spencer
Ralph N. Kleps, ex officio

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

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

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

The minutes of the meeting of December 15, 16 and 17, 1960, were... approved after the following changes were made:

Page 10. The words "the same proceeding" were substituted for "that court" in the last line of the paragraph under Section 1292.6.

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Page 16. The question was raised as to the wording of paragraph (c) which was to be added to subdivision (1) of Section 1255b. It was agreed that this paragraph should be amended as follows after the bill containing this section has been introduced:

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

I. ADMINISTRATIVE MATTERS

A. Identity of Commission Bills: The Executive Secretary stated that Messrs. Bradley and Kleps had suggested that the bills of the Commission introduced by its legislative members should be designated as introduced "at the request of the California Law Revision Commission." Inasmuch as neither Messrs. Bradley nor Kleps were present, it was agreed that Mr. McDonough and the Executive Secretary should determine the purpose for the identification and then act accordingly.

B. Distribution of Recommendation and Study re Claims Against Public Officers and Employees: It was agreed that the Commission's Recommendation and Study relating to the Presentation of Claims Against Public Officers and Employees should be distributed to the same persons and entities who received the Recommendation and Study relating to claims against public entities.

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

February 10 and 11, 1961 - Sacramento
March 17 and 18, 1961 - Sacramento
April 21 and 22, 1961 - Sacramento
May 19 and 20, 1961 - (location not determined)

II. CURRENT STUDIES

A. Study No. 32 - Arbitration: The Commission considered Memorandum No. 3(1961), the First Supplement to Memorandum No. 3(1961) and the proposed recommendation and legislation relating to arbitration. The following actions were taken:

Proposed Legislation

During the discussion of the reference to "parties to the arbitration" it was pointed out there are provisions in the proposed statute referring to "parties to the arbitration" at a point in time when the parties to the arbitration have not yet been determined under the statute. It was agreed that in Section 1281.6 "parties seeking arbitration and against whom arbitration is sought" should be substituted for "parties to the arbitration." The staff was to review the various provisions where reference to "parties to the arbitration" was made and to substitute the phrase used in Section 1281.6 where appropriate.

Section 1280. Pursuant to the decision above the phrase "to the arbitration" was deleted from the second line in subdivision (d).

The definition "party to the arbitration" in subdivision (e) was to be revised to contain the following principle:

"Party to the arbitration" means a party to the arbitration agreement: (1) who seeks to arbitrate a controversy pursuant to the agreement; (2) against whom such arbitration is sought pursuant to the agreement; or (3) who is designated as such on the neutral arbitrator's own motion or upon the application by the party for such an order.

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1281.6. Pursuant to the decision above the phrase "parties seeking arbitration and against whom arbitration is sought" was substituted for "parties to the arbitration" in the second sentence of the first paragraph and in the second and third sentences of the second paragraph.

In the second paragraph the phrase "concerned with arbitration" was added after "governmental agency."

Section 1283. The substance of the language contained in Code of Civil Procedure Section 2016(d)(3)(v) is to be substituted for the phrase "will be unable or cannot be compelled to attend." Mr. Selvin voted in opposition to this motion.

Section 1284.2. The section was approved as drafted by the staff.

Sections 1286.2 and 1286.4. A provision is to be added to the end of both Sections 1286.2 and 1286.4 to the effect that if the court is going to grant relief different from that requested in either the petition or response, the court can do so only (1) if all the parties are before the court, or (2) if all the parties have been given reasonable notice that different relief is to be granted and a reasonable opportunity to be heard. Mr. Selvin voted in opposition to this motion.

Subdivision (b) of Section 1286.4 is to be revised to conform to the wording of subdivision (d) of Section 1286.2.

Section 1292.6. As noted on page 1 supra the words "the same proceeding" were substituted for "that court."

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Recommendation

Page 1. In the third line the word "the" was substituted for "that."

Page 4. In the third line of paragraph 1 the words "nature and scope of the" was added before "determinations."

Page 5. In the first line of paragraph 5 the words "concerned with arbitration" were added after "agencies."

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B. Study No. 36(L) - Condemnation: The Commission considered Memorandum No. 97(1960), a Supplement to Memorandum No. 97(1960) containing the statute proposed by the Department of Public Works as modified by the staff, Second and Third Supplements to Memorandum No. 97(1960) and copies of letters from the Department of Public Works to the Executive Secretary (dated November 7, 1960 and January 12, 1961).
The following actions were taken:

No. 2800
- 2800

Mr. McDonough raised the question whether the Commission was the appropriate body to undertake revision of the general statutory provisions relating to pretrial conferences and discovery. The motion, that the Commission should make no recommendation to the Legislature relating to pretrial conferences and discovery in eminent domain but should bring the problems to the attention of the appropriate group (the Judicial Council and the State Bar), did not carry.

A motion then carried to abandon the Commission's first approach (which was to revise the existing discovery statute to include a provision relating to eminent domain proceedings) and to enact in its stead a statute providing for the exchange of information as proposed in the statute attached to the Supplement to Memorandum No. 97 (1960). After the statute relating to exchange of information has been prepared, the Commission will again examine the discovery statute to determine whether any changes are needed therein.

Proposed Statute - Supplement to Memorandum No. 97(1960). The following principles were adopted:

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(a) When a demand for an exchange of information is made, the party demanding the exchange and the party against whom such demand is made must file and serve on each other a statement of information not later than a specified number of days prior to trial. Mr. McDonough voted in opposition to this motion.

(b) The demander must serve his demand for a statement of information on the other parties at least 40 days prior to trial. Each party must then file and serve a statement of information on the other parties at least 20 days before trial. Mr. Grover voted in opposition to this motion.

It was agreed to submit a recommendation to the Judicial Council that they consider revising the rules relating to the pretrial conference in eminent domain proceedings so that the exchange of information might be accomplished prior to the pretrial conference. The dates agreed upon are subject to reconsideration if the Judicial Council does not agree to the recommended change.

(c) The statement of information should identify each witness who will be called by the party to present evidence upon any issue, and should list all transactions (including comparable sales) that the party intends to rely upon at any stage of the trial. The statement should also contain any information indicating the probability or lack of probability of any change in the zoning laws applicable to the property to be taken or damaged.

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(d) The substance of subdivision (c) of draft Section 1246.1 was approved after adding "residence or business" before "address" in clause (3).

(e) In a condemnation proceeding when any expert witness bases his opinion of value on hearsay declarations, the adverse party may call the hearsay declarant and examine him as if under Section 2055 of the Code of Civil Procedure. Mr. Selvin and Mr. Stanton voted in opposition to this motion.

(f) A provision is to be added as clause (4) of subdivision (b) of proposed Section 1246.1 that upon demand for the exchange of information each person must supply the names of all expert witnesses he intends to call to testify upon the value of any property to be taken, the opinion of such witness as to the value of such property, together with supporting data upon which such opinion is based, including but not limited to the highest and best use of the property and any other use for which the property is adaptable, sales and other market data relating to the same or comparable property, the value of the land and the cost of reproduction or replacement of the improvements thereon less depreciation, etc. (The list is to include the various appropriate items listed in subdivision (b)(2) of Section 2106 of the Code of Civil Procedure as amended in the Commission's tentative draft statute.) Mr. Grover voted in opposition to this motion.

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(g) Evidence not listed in the statement should be inadmissible; however, the court should be granted the power to relieve a party from this rule if a showing is made like that required to obtain relief from default under C.C.P. § 473. Mr. Grover voted in opposition to this motion.

The principle to give the trial judge the discretion to exclude evidence that was not included in the statement of information did not carry.

C. Study No. 37(L) - Presentation of Claims Against Public Officers and Employees: The Commission considered Memorandum No. 5(1961) relating to the request of Professor Van Alstyne to publish the claims study and Memorandum No. 4(1961) containing the tentative draft statute prescribing the procedure for the filing of a claim against a public officer or employee. The following actions were taken:

Request of Professor Van Alstyne. It was agreed that Professor Van Alstyne may publish his study on presentation of claims against public officers and employees in the U.C.L.A. Law Review with the standard disclaimer note appended to the article.

Tentative Statute re Claims Procedure Against Public Officers and Employees. The principle was approved that the proposed statute should require the filing of a claim against a public officer or employee only for tortious injuries arising out of dangerous and defective conditions.

It was believed that a statute thus framed would provide notice in the kinds of cases in which the public entities assert that notice is needed.

Section 800. The phrase "claims against which are paid by warrant drawn by the Controller" was added to subdivision (a).

Subdivision (c) was revised to read:

(c) "Public property" means public street, highway, bridge, building, park, grounds, works or property.

Section 802. The comma after "liability" in the last line was deleted.

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Section 803. The word "applicable" was added before "claims" in the second line.

Sections 800, 801, 802 and 803 were then approved as revised.

[Comment: The above changes were made to conform the present proposed statute to the General Claims Statute applicable to local entities.]

Section 810. The word "brought" was substituted for "maintained" in the first line.

The latter portion is to be redrafted to conform it to proposed Section 820, except that the claims under Section 810 are to be presented to the Governor.

It was agreed that the two claims procedures (claims against state officers and employees and claims against officers and employees of local public entities) should be as consistent as possible, and that this statute should parallel as nearly as possible the general claims statute enacted in 1959. Thus a section setting out the requirements of the contents of the claim similar to Section 711 of the Government Code as well as a section providing for a notice of insufficiency of the claim similar to Section 712 of the Government Code should be included.

The staff is to determine the proper person to be required to give the notice of insufficiency.

Sections 812 and 822. In accordance with the above decision these two sections are to conform as nearly as possible to Section 716 of the Government Code.

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In Section 812, the superior court of any county in which "the action could be brought" was substituted for the superior court of any county in which "the Attorney General has an office."

The phrase "the identity of the person against whom the claim is made or" was deleted from subdivision (d) of Section 812.

The staff was directed to draft a provision to present to the Commission for its consideration to permit the late filing of a claim upon a showing that no prejudice resulted.

Section 821. The requirement that the claimant furnish additional copies of the claim was deleted.

Respectfully submitted,

John H. DeMouly
Executive Secretary

Jan 16/61

January 16, 1961

Mr. Ralph N. Kluge
Legislative Counsel
3021 State Capital
Sacramento, California

Dear Ralph:

The following members of the California Law Revision Commission attended a meeting of the Commission held in San Francisco on January 13 and 14, 1961:

Joseph A. Ball
George G. Grover
John R. McDermogh, Jr.
Norman F. Salvin
Sho Sato
Thomas H. Stinson, Jr. (January 14)

Yours sincerely,

John H. Dabouilly
Executive Secretary

By: Louisa R. Lindow
Assistant Counsel

JRL:m

January

January 17, 1961

Honorable Clark L. Bradley
c/o Assembly F. O.
State Capitol
Sacramento, California

Dear Clark:

At its January meeting the Commission agreed that for the February, March and April meetings it would meet in Sacramento. Would you make the necessary arrangements for a room for the Commission to hold its meetings on the following dates:

February 10 and 11
March 27 and 28
April 24 and 25

Thank you for taking care of this matter for me.

Yours sincerely,

John H. Dally
Executive Secretary

By: Louise R. Lindor
Assistant Counsel

LRL/m

Jan 9 1961



STATE OF CALIFORNIA
CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

- ROY A. GUSTAFSON
Chairman
Courthouse
Ventura
- JOHN R. McDONOUGH, Jr.
Vice-Chairman
School of Law
Stanford University
- JAMES A. COBEY
Member of the Senate
P. O. Box 1229
Merced
- CLARK L. BRADLEY
Member of the Assembly
902 First National Bank Bldg.
San Jose 13
- LEONARD J. DIEDEN
Financial Center Bldg.
Oakland
- GEORGE G. GROVER
Security Bank Bldg.
Corona
- HERMAN F. SELVIN
523 West 6th Street
Los Angeles 14
- VAINO H. SPENCER
2902 South Western Avenue
Los Angeles 18
- THOMAS E. STANTON, Jr.
111 Sutter Street
San Francisco
- RALPH N. KLEPS
Ex Office
Legislative Counsel
3021 State Capitol
Sacramento 14

COMMISSION STAFF

- JOHN H. DeMOULLY
Executive Secretary
 - JOSEPH B. HARVEY
Assistant Executive Secretary
 - LOUISA R. LINDOW
- Office of Commission and Staff
School of Law
Stanford University, California

January 6, 1961

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University, California

Dear John:

Apparently my new job will require that I live in San Francisco, and therefore I will be taking advantage of the Commission meeting this month to make some preliminary plans for moving. I will be in San Francisco the night of the 11th and will stay over until sometime Sunday. Accordingly, would you please mail any materials for the meeting to me in care of the Clift Hotel, unless you mail them by Monday. I will be in my office Wednesday morning, but we cannot count on one day service, and I am afraid that anything mailed on Tuesday might reach me after I have left for the airport.

Many thanks.

Sincerely,

George
George G. Grover

GGG:vwp

ES	✓
ASB	