STATE OF CALIFORNIA

REPORT OF THE

CALIFORNIA LAW REVISION COMMISSION

To the Governor and the Legislature of the State of California at the Legislative Session of 1959

January 1959

LETTER OF TRANSMITTAL

To His Excellency Edmund G. Brown
Governor of California
and to the Members of the Legislature

The California Law Revision Commission, created in 1953 to examine the common law and statutes of the State and to recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this State into harmony with modern conditions (Government Code Sections 10300 to 10340), herewith submits this report of its transactions during the year 1958.

Thomas E. Stanton, Jr., *Chairman*
John D. Babbage, *Vice Chairman*
James A. Cobey, *Member of the Senate*
Clark L. Bradley, *Member of the Assembly*
Roy A. Gustafson
Bert W. Levit
Charles H. Matthews
Stanford C. Shaw
Samuel D. Thurman
Ralph N. Kleps, *Legislative Counsel, ex officio*

John R. McDonough, Jr.
Executive Secretary

January 1959

TABLE OF CONTENTS

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1958

I. FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission, created in 1953,[1] consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is an ex officio nonvoting member.

The principal duties of the Law Revision Commission are (1) to examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein, (2) to receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies, judges, public officials, lawyers and the public generally, and (3) to recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.[2]

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.[3]

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

When a study is undertaken the Commission meets with the research consultant to discuss the problem with him. The consultant subsequently submits a detailed research study which is given careful consideration by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter a printed pamphlet is published which contains the official report and recommendation of the Commission together with a draft of any legislation necessary to effectuate

[1] See Cal. Stat. 1953, c. 1445, p. 3036; CAL. GOVT. CODE tit. 2, div. 2, c. 2, §§ 10300-10340.

[2] See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

[3] See CAL. GOVT. CODE § 10335.

the recommendation, and the research study upon which the recommendation is based. This pamphlet is distributed to the Governor, Members of the Legislature, heads of State departments, and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State.[4] Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes which are both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

[4] See CAL. GOVT. CODE § 10333.

II. PERSONNEL OF COMMISSION

There was no change in the membership of the Commission in 1958. Its members are:

		Term expires
Thomas E. Stanton, Jr., San Francisco	Chairman	October 1, 1961
John D. Babbage, Riverside	Vice Chairman	October 1, 1959
Hon. James A. Cobey, Merced	Senate Member	*
Hon. Clark L. Bradley, San Jose	Assembly Member	*
Hon. Roy A. Gustafson, Ventura	Member	October 1, 1961
Bert W. Levit, San Francisco	Member	October 1, 1961
Charles H. Matthews, Los Angeles	Member	October 1, 1959
Stanford C. Shaw, Ontario	Member	October 1, 1959
Samuel D. Thurman, Stanford	Member	October 1, 1959
Ralph N. Kleps, Sacramento	Ex Officio Member	**

III. SUMMARY OF WORK OF COMMISSION

During 1958 the Law Revision Commission was engaged in three principal tasks:

1. Work on various assignments given to the Commission by the Legislature;[5]

2. Consideration of various topics for possible future study by the Commission;[6]

3. A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.[7]

The Commission held nine two-day meetings and one three-day meeting in 1958, four in Southern California (January 24-25, May 16-17, June 13-14 and October 8-10) and six in Northern California (March 20-21, April 18-19, July 18-19, September 5-6, November 7-8 and December 12-13).

---

* The legislative members of the Commission serve at the pleasure of the appointing power.

** The Legislative Counsel is an ex officio nonvoting member of the Law Revision Commission.

[5] See Part IV A of this report *infra* at 8.

[6] See Part IV B of this report *infra* at 11.

[7] See Part V of this report *infra* at 13.

IV. CALENDAR OF TOPICS SELECTED FOR STUDY

A. STUDIES IN PROGRESS

During 1958 the Commission's agenda consisted of the forty-eight topics listed below, each of which it had been authorized and directed by the Legislature to study.

Topics on Which the Commission Expects To Make a Report and Recommendation to the 1959 Session of the Legislature [8]

1. Whether the sections of the Civil Code prohibiting the suspension of the absolute power of alienation should be repealed.[9]
2. Whether Section 660 of the Code of Civil Procedure should be amended to specify the effective date of an order granting a new trial.[10]
3. Whether Sections 2201 and 3901 of the Corporations Code should be made uniform with respect to notice to stockholders relating to a sale of all or substantially all of the assets of a corporation.[11]
4. Whether a statute should be enacted to make it unnecessary to appoint an administrator in a quiet title action involving property to which some claim was made by a person since deceased.[12]
5. Whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission.[13]
6. Whether the Penal Code and the Vehicle Code should be revised to eliminate certain overlapping provisions relating to the unlawful taking of a motor vehicle and the driving of a motor vehicle while intoxicated.[14]
7. Whether the procedures for appointing guardians for nonresident incompetents and nonresident minors should be clarified.[15]
8. Whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of

[8] The legislative authority for the studies in this list is as follows:
Nos. 1 through 5: Cal. Stat. 1955, res. c. 207, p. 4207.
Nos. 6 through 12: Cal. Stat. 1956, res. c. 42, p. 263.
No. 13: Cal. Stat. 1956, res. c. 35, p. 256.
No. 14: Cal. Stat. 1957, res. c. 202, p. 4589.
No. 15: Cal. Stat. 1957, res. c. 222, p. 4618.
No. 16: Cal. Stat. 1957, res. c. 266, p. 4660.

[9] For a description of this topic, see 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 18 (1957). For legislative history and present status, see this report *infra* at 14.

[10] See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 22 (1957). For legislative history and present status, see this report *infra* at 16.

[11] See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 27 (1957).

[12] *Id.* at 30. See this report *infra* at 29.

[13] See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 32 (1957). See also Part XI this report *infra* at 27.

[14] See *id.* 1956 REPORT at 19.

[15] *Id.* at 21. For recommendation, see this report *infra* at 21.

deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales.[16]

9. Whether the law relating to motions for new trial in cases where notice of entry of judgment has not been given should be revised.[17]

10. Whether the law respecting mortgages to secure future advances should be revised.[18]

11. Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the rights of nonresident aliens to inherit property in this State, should be revised.[19]

12. Whether the doctrine of worthier title should be abolished in California.[20]

13. Whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.

14. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.[21]

15. Whether there should be a separate code for all laws relating to narcotics.[21a]

16. Whether it would be feasible to codify and clarify, without substantive change, provisions of law and other legal aspects relating to grand juries into one title, part, division or chapter of one code.[21b]

Other Studies on Progress

a. Studies Which the Legislature Has Directed the Commisison To Make:[22]

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
3. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.

---

[16] *Ibid.*
[17] *Id.* at 22.
[18] *Id.* at 24.
[19] *Ibid.*
[20] *Id.* at 31.
[21] See *id.* 1957 REPORT at 18.
[21a] See Part XIII this report *infra* at 18.
[21b] See Part IX this report *infra* at 20.
[22] Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.
The legislative directives to make these studies are found in the following:
Nos. 1 through 3: Cal. Stat. 1956, res. c. 42, p. 263.
Nos. 4 through 7: Cal. Stat. 1957, res. c. 202, p. 4589.
No. 8: Cal. Stat. 1957, res. c. 287, p. 4744.

4. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
5. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
6. Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.
7. Whether a trial court should have the power to require, as a condition of denying a motion for new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
8. Whether the laws relating to bail should be revised.

b. Topics Authorized by the Legislature Upon the Recommendation of the Commission.[23]

1. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.[24]
2. Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.[25]
3. Whether the law relating to escheat of personal property should be revised.[26]
4. Whether the law relating to the rights of a putative spouse should be revised.[27]
5. Whether the law respecting post-conviction sanity hearings should be revised.[28]
6. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.[29]
7. Whether the Arbitration Statute should be revised.[30]
8. Whether the law in respect of survivability of tort actions should be revised.[31]
9. Whether the law relating to the inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised.[32]

---

[23] Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.
The legislative authority for the studies in this list is:
No. 1: Cal. Stat. 1955, res. c. 207, p. 4207.
Nos. 2 through 8: Cal. Stat. 1956, res. c. 42, p. 263.
Nos. 9 through 21: Cal. Stat. 1957, res. c. 202, p. 4589.
Nos. 22 through 24: Cal. Stat. 1958, res. c. 23.

[24] For a description of this topic, see 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 28 (1957). For legislative history, see 1958 REP. CAL. LAW REVISION COMM'N 13.

[25] See *id.* 1956 REPORT at 22.

[26] *Id.* at 25.

[27] *Id.* at 26.

[28] *Id.* at 28.

[29] *Id.* at 29.

[30] *Id.* at 33.

[31] *Ibid.*

10. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.[33]
11. Whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.[34]
12. Whether the Small Claims Court Law should be revised.[35]
13. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.[36]
14. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.[37]
15. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.[38]
16. Whether the provisions of the Penal Code relating to arson should be revised.[39]
17. Whether Civil Code Section 1698 should be repealed or revised.[40]
18. Whether minors should have a right to counsel in juvenile court proceedings.[41]
19. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.[42]
20. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.[43]
21. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.[44]
22. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.[45]
23. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.[46]
24. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.[47]

B. TOPICS INTENDED FOF FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code the Commission reported 23 topics which it had selected for study to the 1955 Session of the Legislature; 16 of these topics were approved. The Commission

[32] See *id.* 1957 REPORT at 14.
[33] *Id.* at 15.
[34] *Id.* at 16.
[35] *Ibid.*
[36] *Id.* at 17.
[37] *Id.* at 18.
[38] *Id.* at 19.
[39] *Id.* at 20.
[40] *Id.* at 21.
[41] *Ibid.*
[42] *Id.* at 23.
[43] *Id.* at 24.
[44] *Id.* at 25.
[45] See 1958 REP. CAL. LAW REVISION COMM'N 18.
[46] *Id.* at 20.
[47] *Id.* at 21.

reported 15 additional topics which it had selected for study to the 1956 Session, all of which were approved. The 1956 Session of the Legislature also referred four other topics to the Commission for study. The Commission reported 14 additional topics which it had selected for study to the 1957 Session, all of which were approved. The 1957 Session of the Legislature also referred seven additional topics to the Commission for study. The Commission reported five additional topics which it had selected for study to the 1958 Session of the Legislature; three of these topics were approved.

The Commission now has a full agenda of studies in progress [48] which will require all of its energies to complete during the current fiscal year and during fiscal year 1959-60. For this reason the legislative members of the Commission will not introduce at the 1959 Session of the Legislature a concurrent resolution authorizing the Commission to undertake additional studies. The Commission anticipates that such a concurrent resolution will be introduced at the 1960 Session.

[48] See Part IV A of this report *supra* at 8.

V. REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

> The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's 1958 Report was prepared.[49] It has the following to report:

1. Three decisions of the Supreme Court of the United States holding two statutes of the State unconstitutional have been found:

In *California Comm'n* v. *United States,* 355 U.S. 534 (1958), the Supreme Court held Section 530 of the Public Utilities Code invalid under the Supremacy Clause of the Constitution of the United States insofar as it prohibits common carriers from transporting property of the federal government at rates other than those approved by the California Public Utilities Commission.

In *Speiser* v. *Randall,* 357 U.S. 513 (1958), and *First Unit. Church* v. *Los Angeles,* 357 U.S. 545 (1958), the Supreme Court held Section 32 of the Revenue and Taxation Code invalid under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States because it places on applicants for tax exemptions the burden of proof as to whether they are persons or organizations which advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means or advocate the support of a foreign government against the United States in the event of hostilities.

2. No decision of the Supreme Court of the United States holding a statute of the State repealed by implication has been found.

3. No decision of the Supreme Court of California holding a statute of the State unconstitutional or repealed by implication has been found.

[49] This study has been carried through 51 Advance California Reports 292 (1958) and 79 Supreme Court Reporter 159 (1958).

VI. SUSPENSION OF THE ABSOLUTE POWER OF ALIENATION

At the 1957 Session of the Legislature Honorable Clark L. Bradley introduced Assembly Bill No. 249, a bill drafted by the Commission to eliminate from the Civil Code several provisions which collectively are known as the rule prohibiting suspension of the absolute power of alienation (hereinafter referred to as the suspension rule).[50] The bill failed to pass, principally because a question was raised as to whether it provided an adequate substitute for the suspension rule as a limitation on the duration of private trusts.[51] The Commission has studied the matter further since 1957 and has drafted a bill which it believes will meet the objections which were made to A. B. 249.

Assembly Bill No. 249 would have provided as a substitute for the suspension rule as a limitation on the duration of private trusts a new Section 771 of the Civil Code which would have read as follows:

> 771. A trust is not invalid, either in whole or in part, merely because the duration of the trust may exceed the time within which future interests in property must vest under this title, if the interest of all the beneficiaries must vest, if at all, within such time.
>
> A provision, express or implied, in the terms of an instrument creating a trust that the trust may not be terminated is effective if the trust is limited in duration to the time within which future interests in property must vest under this title. But if the trust is not so limited in duration, such a provision is ineffective insofar as it purports to be applicable beyond the time within which future interests in property must vest under this title and the provision is wholly ineffective unless, consistently with the purposes of the trust, it may be given effect for some period not exceeding such time.

The concern expressed in 1957 was that the repeal of the suspension rule and the enactment of this provision to limit the duration of trusts might result in trusts of perpetual duration or at least which would last well beyond the period which is permissible under the suspension rule today. The Commission thought that this was unlikely to happen because under the second paragraph of proposed new Section 771 the beneficiaries could terminate the trust by their joint action at any time after the time within which future interests in property must vest—*i.e.*, lives in being plus 21 years. It was contended, however, that this is not a sufficient safeguard because of the problem of getting all of the beneficiaries to agree upon termination.

In the course of the Commission's further consideration since 1957 of proposed Section 771 of the Civil Code a question was raised as to

[50] For the Commission's recommendation and its supporting research study on this subject, see *Recommendation and Study relating to Suspension of the Absolute Power of Alienation,* 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES at G-1 *et seq.* (1957).

[51] See discussion of the problem in the research consultant's report *id.* at G-18-22.

whether the first sentence of the second paragraph thereof might be construed to prohibit termination of an inter vivos trust which would not endure longer than the permissible perpetuities period even though the settlor and all of the beneficiaries, being competent and of age, desired termination. This would be a departure from present law and would be undesirable. While the Commission does not believe that the first sentence would be so construed, it seems best to avoid any doubt on the matter by omitting the first sentence of the second paragraph altogether and revising the paragraph to read as follows:

> If a trust is not limited in duration to the time within which future interests in property must vest under this title, a provision, express or implied, in the instrument creating the trust that the trust may not be terminated is ineffective insofar as it purports to be applicable beyond such time and the provision is wholly ineffective unless, consistently with the purposes of the trust, it may be given effect for some period not exceeding such time. A provision, express or implied, in an instrument creating an inter vivos trust that the trust may not be terminated shall not prevent termination by the joint action of the creator of the trust and all of the beneficiaries thereunder if all concerned are competent and if the beneficiaries are all of the age of majority.

After giving careful consideration to the matter of providing additional safeguards with respect to the duration of trusts the Law Revision Commission decided to recommend that a third paragraph be added to proposed new Section 771 of the Civil Code to read as follows:

> Whenever a trust has existed longer than the time within which future interests in property must vest under this title
>
> (1) it shall be terminated upon the request of a majority of the beneficiaries
>
> (2) it may be terminated by a court of competent jurisdiction upon the petition of the Attorney General or of any person who would be affected thereby if the court finds that such termination would be in the public interest or in the best interest of a majority of the persons who would be affected thereby.

This proposed solution of the problem of placing limitations on the duration of trusts gives a majority of the beneficiaries the absolute power to compel dissolution of the trust after it has endured for a period measured by lives in being plus 21 years. Thus it would make it impossible for any beneficiary or group of beneficiaries less than a majority to veto termination. As an additional safeguard, the proposed statute empowers a court to dissolve a trust after such period upon the petition of the Attorney General or of any interested person if public or private interest so requires, even though a majority or even all of the beneficiaries desire to have the trust continued.

A bill making these changes in proposed new Section 771 of the Civil Code, but otherwise substantially identical with A. B. 249, will be introduced at the 1959 Session of the Legislature by one of the legislative members of the Commission.

VII. EFFECTIVE DATE OF ORDER RULING ON MOTION FOR NEW TRIAL

A study made by the Commission prior to the 1957 Session of the Legislature disclosed that the California decisions are in confusion as to precisely what must be done by a judge before whom a motion for new trial is pending to make an effective ruling within the 60 days in which he has jurisdiction to act under Section 660 of the Code of Civil Procedure.[52] The Commission proposed that the matter be clarified by adding the following provision to Section 660:

> A motion for a new trial is determined within the meaning of this section when (1) an order ruling on the motion is first entered in the minutes or (2) a written order ruling on the motion is signed by the judge. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

In making this recommendation the Commission gave controlling weight to three considerations: (1) that the critical event should be one relatively early in the process of deciding a motion for new trial, (2) that it should be an event of which there would be a written record and (3) that the provision enacted should reduce to a minimum the possibility that a motion upon which a judge had decided to act favorably within the 60-day period would be lost by the subsequent failure of the clerical personnel of the court to see that the order was entered or filed within such period.

The Commission's proposal was embodied in Senate Bill No. 36 which was introduced by the late Honorable Jess R. Dorsey, Member of the Senate for the 34th Senate District, then the Senate Member of the Commission. The State Bar objected to S. B. 36 in its original form on the ground that it would enable a party to contend that an order had been made (*i.e.*, entered in the temporary minutes or signed by the judge) during the 60-day period, even though the order had not been entered in the permanent minutes or filed until long after the period had elapsed. This, it was feared, created too great a risk that it could be made to appear that new trial orders had been made within the 60-day period when in fact they had not. On the other hand, the State Bar was of the view, as the Commission had been all along, that a rule requiring an order to be filed or entered in the permanent minutes within the 60-day period was too strict, particularly as applied to cases where a judge had heard a motion for new trial while sitting on assignment and had decided it at or near the end of the 60-day period back in his home county. After the matter was discussed the Commission recommended that S. B. 36 be amended to provide for the addition of the following sentence to Section 660 rather than the one originally proposed:

> A motion for a new trial is determined within the meaning of this section when, within the applicable 60-day period, (1) an order ruling on the motion is first entered in either the temporary or the

[52] See *Recommendation and Study relating to the Effective Date of an Order Ruling on a Motion for New Trial*, 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES at K-1 *et seq.* (1957).

permanent minutes; provided, that if the order is first entered in the temporary minutes it is subsequently entered in the permanent minutes not later than five days after the expiration of such 60-day period or (2) a written order ruling on the motion is signed by the judge; provided, that the order is filed not later than five days after the expiration of such 60-day period. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

As amended, the bill was passed by the Legislature but vetoed by the Governor. The Commission understands that the Governor's veto was based on the advice of his staff that the reference in the amended bill to "temporary minutes" might lead to difficulty since there is no other reference in the codes to "temporary minutes."

The Commission has studied this matter further since the 1957 Session and has decided to recommend to the 1959 Session of the Legislature that the following sentence be added to Section 660 of the Code of Civil Procedure rather than the language proposed in the 1957 bill in either its original or its amended form:

A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed. The minute entry shall in all cases show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

It is true that under this proposal a party could lose the benefit of an order granting a new trial which had been signed or entered in the temporary minutes during the 60-day period merely because the order had not been filed or entered in the permanent minutes within such period. In the opinion of the Commission, however, the important consideration is that there be a clear rule for court and counsel to follow. The Commission believes that once Section 660 is clarified as proposed an attorney who has made a motion for a new trial can take such steps as are necessary to assure that the order made by the court is entered or filed within the 60-day period. Moreover, the rule now proposed by the Commission codifies the more recent court decisions on the subject and conforms substantially to the rule embodied in Rule 2(b) of the Rules on Appeal.[53]

[53] Under the proposed revision Section 660 will provide that an order ruling on a motion for a new trial is effective when entered in the permanent minutes or signed and filed even though it directs that a written order be prepared, signed, and filed. The Commission recognizes that under Rule 2(b) of the Rules on Appeal the time for appeal does not start to run in such a case until the later order is filed. However, this proposed difference in the rules is justified because of the different purposes which they serve. It is desirable to make as early an event in the process of decision as possible a "determination" within the meaning of Section 660 to avoid an unintended denial of the motion by operation of law when later events relating to the order occur after the 60-day period has elapsed. On the other hand, it is desirable to make a relatively late event relating to the order critical for the purpose of starting the time for appeal to run in order to give maximum opportunity to file an appeal.

VIII. CODIFICATION OF LAWS RELATING TO NARCOTICS

Resolution Chapter 222 of the Statutes of 1957, which was introduced by Honorable George G. Crawford, Member of the Assembly for the 79th Assembly District, requested the Law Revision Commission to study the advisability of a separate code for all laws relating to narcotics, with needed substantive revision from a health and a law enforcement standpoint.

Following the 1957 Session the Subcommittee on Police Administration and Narcotics of the Assembly Interim Judiciary Committee was created with Assemblyman Crawford as its Chairman. The Law Revision Commission thereupon suggested to Mr. Crawford that to avoid duplication of effort the Commission should limit its work under Resolution Chapter 222 to a study of the advisability of a separate code for laws relating to narcotics, leaving to the Subcommittee on Police Administration and Narcotics all questions relating to substantive revision of such laws. Mr. Crawford concurred in this suggestion. Pursuant to this understanding the Commission has made no study of substantive revision of the narcotics laws and makes no recommendation relating thereto.

The Law Revision Commission subsequently entered into a contract with the Legislative Counsel for the compilation of all laws relating to narcotics. From this compilation it appears that such laws include:

1. Chapter 9 of Division 2 (commencing with Section 4000) of the Business and Professions Code, relating to pharmacy, except for Article 9 which relates to prophylactics.
2. Division 10 (commencing with Section 11000) of the Health and Safety Code, relating to narcotics.
3. Chapter 2 of Division 21 (commencing with Section 26200) of the Health and Safety Code, relating to drugs, except Section 26200.5 which relates to vitamins.
4. Chapter 8 of Title 7 of Part 3 (commencing with Section 6100) of the Penal Code, relating to the Medical Facility.
5. Article 1 of Chapter 3 of Division 6 of Part 1 (commencing with Section 5350) of the Welfare and Institutions Code, relating to narcotic drug addicts.
6. Article 2 of Chapter 3 of Division 6 of Part 1 (commencing with Section 5400) of the Welfare and Institutions Code, relating to habit forming drug addicts.
7. Eighty-four miscellaneous sections from various codes.[54]

[54] These include: CAL. BUS. & PROF. CODE §§ 1000-10, 2137, 2140, 2384, 2390, 2391, 2391.5, 2394, 2616, 2670, 2685, 2762, 2878.5, 2936, 2960, 6581, 7431, 9028, 24200, 24200.5; CAL. CIV. CODE § 69; CAL. EDUC. CODE §§ 8255, 10191, 10192, 11152, 12106, 16078, 20456; CAL. FIN. CODE § 951; CAL. GOVT. CODE §§ 1770, 15001, 15002.5, 18935, 19572, 20013, 20014, 20017.7, 21020.7, 21290.7, 21292.7, 21363.7, 25480, 31726, 31726.5, 31728, 31746; CAL. H. & S. CODE §§ 201, 24384, 26558; CAL. INS. CODE §§ 10369.12, 10372; CAL. LABOR CODE § 2651; CAL. PEN. CODE §§ 171a, 222, 261, 274, 275, 337f, 337g, 337h, 380, 382, 383, 817, 1419, 2772, 2790, 4573, 4573.6, 12021; CAL. PROB. CODE § 1751; CAL. PUB. UTIL. CODE §§ 21254, 21407, 21408; CAL. UNEMPL. INS. CODE § 2678; CAL. VEH. CODE §§ 269, 292.5, 304, 305, 506, 506.1, 736; CAL. WELF. & INST. CODE §§ 700, 7068, 7110.

Upon receipt of the compilation the Law Revision Commission requested the Legislative Counsel to submit to the Commission his recommendation as to whether a separate code of narcotics laws would be justified. His response, dated January 30, 1958, is as follows:

> In connection with the compilation of laws relating to narcotics, carried out by this office under contract with the California Law Revision Commission, you have asked whether a separate code of laws relating to narcotics would be justified in our opinion.
>
> I have no hesitation in concluding that such a separate "narcotics code" would not be justified.
>
> As you know, the California Code Commission devoted many years to the creation of our system of 25 codes. The allocation of statutory material relating to narcotics dates back to 1939 in the case of the Health and Safety Code (Secs. 11000, and following), and dates back to 1937 in the case of the Business and Professions Code (Secs. 4000, and following). In 1955, as part of a comprehensive revision of the pharmacy laws, the Legislature moved the "dangerous drug" provisions formerly located in the Health and Safety Code at Sections 29000, and following, to the Business and Professions Code (Secs. 4210, and following). Thus, although isolated provisions dealing with narcotics do exist in other codes, the statutes governing the illegal use of narcotics are now concentrated in the Health and Safety Code, and the statutes regulating the legal handling of drugs and narcotics are found in the Business and Professions Code. This allocation appears logical and it has become familiar to those who are required to deal with these statutes.
>
> The volume of statutory material on narcotics is insufficient, in my opinion, to warrant a separate code. In addition, I see no reason to disturb a well established statutory format in the absence of compelling reasons for doing so.

The Law Revision Commission concurs in the views expressed by the Legislative Counsel and recommends that a separate code for laws relating to narcotics not be established. The compilation of narcotics laws made by the Legislative Counsel will be retained in the files of the Commission and is available to Members or Committees of the Legislature and to other governmental agencies upon request.

IX. CODIFICATION OF LAWS RELATING TO GRAND JURIES

Resolution Chapter 266 of the Statutes of 1957, introduced by Honorable Walter I. Dahl, Member of the Assembly for the 16th Assembly District, directed the Commission "to consider and study the feasibility of codifying and clarifying, without making substantive change, all provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code."

The Commission entered into a contract with the Legislative Counsel to have him draft for the Commission's consideration such legislation as would be necessary to achieve this objective. Working with the Legislative Counsel the Commission has drafted a bill which will, if enacted, place substantially all statutes relating to grand juries in a new Title 4, Part 2 of the Penal Code. Copies of this bill have been sent to the Attorney General and to district attorneys, superior court judges and jury commissioners throughout the State with an invitation to send the Commission their questions, comments, criticisms and suggestions. All responses to this invitation will be given careful consideration by the Commission before the bill is placed in final form. It is contemplated that this procedure will be completed in time to permit a bill on this subject to be introduced in the 1959 Session of the Legislature.

The bill which will be introduceed will improve the statutory law relating to grand juries by bringing it together and clarifying it in certain respects. However, the bill will not undertake to clarify and modernize this body of law completely, in view of the provision in Resolution Chapter 266 that no "substantive change" should be made in the course of the Commission's work. By reason of this limitation the Commission has refrained from recommending any change which might be construed to be substantive in nature, even in instances where it considered that the particular change was desirable and noncontroversial.

X. RECOMMENDATION RELATING TO PROCEDURE FOR APPOINTING GUARDIANS *

Appointment of Guardian for Insane or Incompetent Person. Section 1460 of the Probate Code authorizes the appointment of a guardian for an insane or incompetent person [55] and Section 1461 specifies the procedure to be followed in making such appointments.[56] These sections are by their terms of general application and, considered alone, would appear to apply to nonresident insane and incompetent persons. However, Section 1570 of the Probate Code expressly authorizes the appointment of guardians for nonresidents and specifies the procedure to be followed in such cases.[57] Since the provisions of Section 1570 are different in several respects from those of Sections 1460 and 1461, there arises the question of which provisions control with respect to nonresidents. Such an ambiguity would normally be resolved by applying the well established rule of statutory construction that a statute expressly directed to a particular matter (here Section 1570) controls

* This Recommendation is based on a study made by the Law Revision Commission Staff.

[55] "1460. Any superior court to which application is made as hereinafter provided may appoint a guardian for the person and estate or person or estate of an insane or an incompetent person. As used in this division of this code, the phrase 'incompetent person,' 'incompetent,' or 'mentally incompetent,' shall be construed to mean or refer to any person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons."

[56] "1461. Any relative or friend may file a verified petition alleging that a person is insane or incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged insane or incompetent person within the second degree residing in this State; thereupon the clerk shall set the same for hearing by the court and issue a citation directed to said alleged insane or incompetent person setting forth the time and place of hearing so fixed by him; said citation and a copy of the petition shall be personally served on the alleged insane or incompetent person in the same manner as provided by law for the service of summons, at least five days before the time of hearing; notice of the nature of the proceedings and of the time and place of the hearing, so set by the clerk, shall be mailed at least five (5) days before such hearing date to each of such relatives of the alleged insane or incompetent person. Any relative or friend of the alleged insane or incompetent person may appear and oppose the petition.

Such person, if able to attend, must be produced at the hearing, and if not able to attend by reason of physical inability, such inability must be evidenced by the affidavit of a duly licensed physician or surgeon, or other duly licensed medical practitioner, unless such alleged insane or incompetent person is a patient at a county or state hospital in this State in which case the affidavit of the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital, to the effect that such patient is unable to attend, shall be prima facie evidence of that fact."

[57] "1570. The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or insane or incompetent person who resides out of the State and who is within the county, or who has estate within the county, and who has no guardian within the State, upon petition of any friend of such person or of anyone interested in his estate, in expectancy or otherwise. If the nonresident ward is an insane or incompetent person, before making such appointment the court or judge must cause notice to be delivered personally to the alleged insane or incompetent person and to be given to such other person or persons as the court or judge deems proper in such manner as deemed reasonable. If the nonresident ward is a minor, notice shall be given to the persons and in the manner required by Section 1441 of this code. The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this State, and the court of no other county has jurisdiction."

It should be noted that the definiiton of an incompetent person is the same for both residents and nonresidents by virtue of the fact that the definition of the term in Section 1461 begins "as used in this division of this code" Section 1570 as well as Section 1461 is in Division 4 of the code.

over a statute of general application which is also broad enough to encompass the same subject.[58] The ambiguity has not been so resolved in the case of these statutes, however; rather, it is the practice to follow the procedures specified in both Section 1461 and Section 1570 in appointing a guardian for a nonresident insane or incompetent person.[59] Literal compliance with both statutes imposes more procedural requirements than would appear to be justifiable and is a potential source of confusion or oversight, or both, by court and counsel. The Commission recommends, therefore, that Section 1460 be amended to make it applicable only to appointment of guardians for persons residing in this State [60] and that Section 1570 be amended to delete its provisions respecting appointment procedure and insert in lieu thereof a cross-reference to Section 1461. This will make substantially the same procedure applicable to both residents and nonresidents and should assure that this will continue to be the case since all future amendments will be made to Section 1461.

In the course of making this study the Commission became aware of the desirability of making certain substantive changes in Section 1461. Certain other changes should be made therein if Section 1461 is made applicable to the appointment of guardians for nonresidents. In addition, certain changes should be made in both Section 1461 and Section 1570 to eliminate differences between them with respect to who may petition to have a guardian appointed. Accordingly, the Commission recommends that Sections 1461 and 1570 of the Probate Code be revised in the following respects:

1. Section 1461 authorizes a petition for guardianship to be filed by "any relative or friend." Section 1570 provides that a petition may be filed by "any friend . . . or . . . anyone interested in his estate, in expectancy or otherwise." To avoid any difference in the law applicable to residents and nonresidents and to broaden the category of persons authorized to petition in the case of both it is recommended

[58] Burum v. State Compensation Ins. Fund, 30 Cal.2d 575, 184 P.2d 505 (1947); Brill v. County of Los Angeles, 16 Cal.2d 726, 108 P.2d 443 (1940); CRAWFORD, STATUTORY CONSTRUCTION § 167 (1940). *Cf.* CAL. CIV. CODE § 3534.

[59] Los Angeles County Probate Policy Memoranda Rule 702 states that:

> In the case of the appointment of a guardian of the estate of a non-resident ward, the notice required in said Section 1570 is in addition to all other requirements for the appointment of guardian of the estate. For example, Section 1461 of the Probate Code requires a citation to be personally served on the alleged incompetent person in the same manner as provided by law for the service of summons, which in the case of a non-resident alleged incompetent requires an order for publication, followed by out of state substituted personal service on the alleged incompetent.

And see colloquy between participants, Judge Herndon and Mr. Farrand, during a panel discussion on probate practice and procedure at the 1954 State Bar convention, to the effect that compliance with both Section 1461 and Section 1570 is necessary when the appointment of a guardian of a nonresident ward is sought, reported verbatim in Los Angeles Daily Journal Reports 300 (1954). See also 2 CONDEE, CALIFORNIA PROBATE COURT PRACTICE § 1370 (1955).

[60] Section 1460 should not be applicable to nonresidents because it authorizes appointment of a guardian for the person of the incompetent without requiring that he be found within the State. Resort to Section 1460 is unnecessary when the nonresident is found within the State or has property here because Section 1570 authorizes a guardian to be appointed in these circumstances. The constitutionality of appointing a guardian of the person in other circumstances is open to doubt. Grinbaum v. Superior Court, 192 Cal. 566, 221 Pac. 651 (1923), held that a guardian of the person cannot be appointed without personal jurisdiction over the ward. While such jurisdiction may be asserted without personal service of process in some cases [*Cf.* Milliken v. Meyer, 311 U.S. 457 (1940); Smith v. Smith, 45 Cal.2d 235, 288 P.2d 497 (1955); Allen v. Superior Court, 41 Cal.2d 306, 259 P.2d 905 (1953).], there would seem to be no need to have a guardian appointed for a nonresident in cases other than those covered by Section 1570.

that both Section 1461 and Section 1570 be amended to permit a petition to be filed by "any relative, friend, or person interested in his estate in expectancy or otherwise."

2. Section 1461 requires the petitioner to set forth the names of all relatives of the incompetent within the second degree residing in the State who are known to the petitioner and requires that these relatives be given five days notice by mail of the hearing of the petition. No reason appears why, if there are relatives within the second degree of an alleged insane or incompetent person living outside the State who are known to the petitioner they should not be named in the petition and given notice of the hearing and it is recommended that Section 1461 be amended so to provide. The Commission also recommends that at least 10 days notice of the hearing be required to be given to relatives named in the petition unless the court shortens the time for good cause shown. The longer period is particularly desirable when nonresident relatives are involved, as would be the case under the amendment of Section 1461 proposed by the Commission, because of the greater difficulty they will probably have in arranging to be present or to have the alleged incompetent's interests adequately represented.

3. Section 1461 provides that a citation shall be issued to the alleged incompetent or insane person setting forth the time and place of the hearing of the petition and that the citation and a copy of the petition shall be personally served on him at least five days before the hearing in the manner provided by law for the service of summons. This provision should be limited in application to resident incompetent and insane persons. With respect to nonresidents the statute should require simply that the citation and a copy of the petition be delivered personally to the alleged insane or incompetent person [61] not less than 15 days before the hearing unless the court shortens the time for good cause shown.[62] The longer period of notice to nonresidents is desirable because of the greater difficulty which they will probably have in arranging for effective representation of their interests.

4. Section 1570 requires the court to give notice of the proceeding "to such other person or persons as the court or judge deems proper in such manner as deemed reasonable." Section 1461 has no similar provision, providing only that relatives within the second degree named in the petition be given notice by mail. The Commission believes that cases might arise in which there would be no such relatives but where notice could and should be given to more remote relatives or to friends of the alleged incompetent or insane person, either within or without the State, in the interest of having his interests adequately represented. It is recommended, therefore, that Section 1461 be amended to incorporate a provision authorizing the court to require that such notice be given.

[61] In Grinbaum v. Superior Court, 192 Cal. 528, 221 Pac. 635 (1923), the court stated that a requirement of personal service on the nonresident must be read into Section 1793 of the Code of Civil Procedure (the predecessor of Section 1570 of the Probate Code) which at that time merely provided that "the court must cause notice to be given to all persons interested, in such manner, as such court deems reasonable." CAL. CODE CIV. PROC. § 1793 (Deering 1923). In 1949 Section 1570 was amended to provide that notice must be delivered personally to the nonresident alleged insane or incompetent person. Cal. Stat. 1949, c. 617, p. 1115.

[62] This provision will make it unnecessary to obtain an order for publication before serving the nonresident personally outside the State, a procedure presently thought to be necessary. See authorities cited in note 59 *supra*.

5. Section 1461 provides that an alleged insane or incompetent person must be produced at the hearing if able to attend, with specific provisions for proof of physical inability to attend. There is no similar provision relating to nonresidents. While it obviously would not be practicable to require the attendance of the nonresident alleged incompetent or insane nonresident in every case, it would appear to be desirable to give the court discretion to require that he be produced in particular cases in the interest of justice and it is recommended that Section 1461 be amended so to provide.

Appointment of Guardian for Minor. Section 1440 of the Probate Code authorizes the appointment of guardians for resident and nonresident minors;[63] Section 1441 specifies the procedure to be followed in such cases.[64] Section 1570 of the Probate Code also authorizes the appointment of a guardian for a nonresident minor. There is, however, no conflict or ambiguity among these sections as to the procedure to be followed in appointing a guardian, such as there is between Section 1570 and Section 1461 in respect of guardians for nonresident insane and incompetent persons. This is for the reason that Section 1570 expressly incorporates by reference the notice provisions of Section 1441. There is, however, one inconsistency between Section 1440 and Section 1570, in that the former authorizes a minor 14 years of age or older to petition for the appointment of a guardian. It is recommended that this difference be eliminated by amending Section 1570 to authorize a nonresident minor 14 years or older to petition to have a guardian appointed for himself.

The Commission's recommendations would be effectuated by enactment of the following measure:*

An act to amend Sections 1460, 1461 and 1570 of the Probate Code, relating to the appointment of guardians for minors and for insane and incompetent persons.

The people of the State of California do enact as follows:

SECTION 1. Section 1460 of the Probate Code is amended to read:

1460. Any superior court to which application is made as hereinafter provided may appoint a guardian for the person and estate or person or estate of an insane or an incompetent person, *who is a resident of this State.* As used in this division of this code, the phrase "incompetent person," "incompetent," or "mentally incompetent,"

* Matter in italics would be added to the present laws; matter in "strikeout" type would be omitted.

[63] "1440. When it appears necessary or convenient, the superior court of the county in which a minor resides or is temporarily domiciled, or in which a nonresident minor has estate, may appoint a guardian for his person and estate, or person or estate. The appointment may be made upon the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age.

The court may issue letters of guardianship over the person or estate, or both, of more than one minor upon the same application, in its discretion. When there is an application for more than one minor, the court may permit a joint or separate bond in such multiple application."

[64] "1441. Before making the appointment, such notice as the court or a judge thereof deems reasonable must be given to the person having the care of the minor and to such relatives of the minor residing in the state as the court or judge deems proper. In all cases notice must be given to the parents of the minor or proof made to the court that their addresses are unknown, or that, for other reason, such notice can not be given."

shall be construed to mean or refer to any person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons.

SEC. 2. Section 1461 of the Probate Code is amended to read:

1461. Any relative, ~~or~~ friend, *or person interested in his estate in expectancy or otherwise* may file a verified petition alleging that a person is insane or incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged insane or incompetent person within the second degree residing ~~in~~ *within or without* this State. ~~,~~ ~~thereupon~~ ~~the~~ *The* clerk shall set the ~~same~~ *petition* for hearing by the court and issue a citation directed to ~~said~~ *the* alleged insane or incompetent person setting forth the time and place of hearing so fixed by him. ~~,~~ ~~said~~

If the alleged insane or incompetent person is within the State the citation and a copy of the petition shall be personally served on ~~the alleged insane or incompetent person~~ *him* in the same manner as provided by law for the service of summons ~~,~~. *If the alleged insane or incompetent person is not within the State the citation and a copy of the petition shall be delivered to him, personally. In all cases service shall be made on the alleged insane or incompetent person* at least ~~five~~ *ten* days before the time of hearing ~~,~~ ~~notice~~ *unless the time is shortened by the court for good cause shown.*

Notice of the nature of the proceedings and of the time and place of the hearing ~~,~~ ~~so set by the clerk,~~ shall be mailed ~~at least five (5) days before such hearing date~~ to each of ~~such~~ *the* relatives of the alleged insane or incompetent person *named in the petition, at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct.* Any relative or friend of the alleged insane or incompetent person may appear and oppose the petition.

~~Such person, if~~ *If the alleged insane or incompetent person is within the State and is* able to attend, *he* must be produced at the hearing, and if *he is* not able to attend by reason of physical inability, such inability must be evidenced by the affidavit of a duly licensed physician or surgeon, or other duly licensed medical practitioner, unless such alleged insane or incompetent person is a patient at a county or state hospital in this State in which case the affidavit of the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital, to the effect that such patient is unable to attend, shall be prima facie evidence of that fact.

If the alleged insane or incompetent person is not within the State and if the court determines that his attendance at the hearing is necessary in the interest of justice the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged insane or incompetent person is not able to attend by reason of physical inability, such inability must be evidenced by the affidavit of a duly

licensed physician or surgeon, or other duly licensed medical practitioner, unless such alleged insane or incompetent person is a patient at a county or state hospital in which case the affidavit of the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital, to the effect that such patient is unable to attend, shall be prima facie evidence of that fact.

SEC. 3. Section 1570 of the Probate Code is amended to read:

1570. The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or insane or incompetent person who resides out of the State and who is within the county, or who has estate within the county, and who has no guardian within the State, upon petition of any *relative or* friend of such person or of any ~~one~~ *person* interested in his estate, in expectancy or otherwise. *A minor may, if he is fourteen years of age or older, petition to have a guardian appointed for himself.*

If the nonresident ward is an insane or incompetent person, ~~before making such appointment the court or judge must cause notice to be delivered personally to the alleged insane or incompetent person and to be given to such other person or persons as the court or judge deems proper in such manner as deemed reasonable.~~ *the appointment shall be made in compliance with Section 1461 of this code.* If the nonresident ward is a minor, ~~notice shall be given to the persons and in the manner required by~~ *the appointment shall be made in compliance with* Section 1441 of this code.

The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this State, and the court of no other county has jurisdiction.

XI. REPORT ON STUDY RELATING TO DUTIES OF CITY AND COUNTY LEGISLATIVE BODIES WHEN THERE IS NO PLANNING COMMISSION

The Law Revision Commission invites legislators, judges, other public officials, attorneys, law professors and other interested persons to suggest topics for study by the Commission. One City Attorney responded to this invitation by suggesting that Chapters 3 and 4 of Title 7 of the Government Code, which are concerned with the adoption and administration of master plans, precise plans and zoning ordinances, are ambiguous and in need of revision.

A preliminary study by the Commission tended to confirm the existence of the ambiguities reported,[65] particularly with respect to the procedure which cities and counties not having planning commissions must follow in connection with public planning and the adoption of zoning ordinances. Accordingly, the Commission requested and was given authority to make a study "to determine whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission."[66]

When authority to make this study was requested the Commission believed that any legislation which might result therefrom would involve only technical revision of Chapters 3 and 4 of Title 7 of the Government Code to clarify existing law. The Commission has found, however, that it is not possible to recommend such revisions as would be necessary to clarify the statutory law in this area without deciding fundamental policy questions as to the desirability of public planning without the participation of a planning commission and as to what procedures should be required in connection with the adoption of master and precise plans and zoning ordinances in circumstances where no planning commission exists or where such commission is not functioning.

For example, cities and counties which do not have planning commissions have no general power to adopt master and precise plans at the present time.[67] It would be a relatively simple matter to draft statutory provisions which would enable such entities to adopt such plans, but before it could recommend the enactment of such provisions the Commission would have to decide the policy question whether any governmental entity should be empowered to adopt a master plan or a precise plan without the participation of a planning commission in the formulation of the plan. Similarly, it would be possible to eliminate the ambiguity which presently exists under Section 65808 of the Government Code as to how many meetings the legislative body of a city or county which does not have a planning commission must hold in the process of adopting a zoning ordinance—for example, a statute could be drafted providing that such an ordinance could be adopted after holding one public meeting of which published notice is given. Before

[65] See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 REPORT at 32 (1957).
[66] Cal. Stat. 1955, res. c. 207, p. 4207.
[67] Government Code Section 65055 authorizes cities and counties included in a regional planning district to contract to have other cities or counties in the district furnish planning services. Some cities and counties not having planning commissions could theoretically adopt master or precise plans through this device. However, the Commission is informed that no regional planning districts have yet been established.

it could recommend the enactment of such a statute, however, the Commission would have to decide the policy question whether a local legislative body acting in the place of a planning commission should be required to hold one hearing at the planning stage and one at the adoption stage before a zoning ordinance could be adopted.

The Commission believes that it should not recommend legislation which is based on the resolution of this kind of policy question. The subject of public planning is currently receiving careful and continuing attention from interim committees of the Legislature.[68] While ambiguities exist in the statutes in this field, there is no reason to conclude that the statutes are antiquated or out of harmony with modern conditions. In deciding such questions as whether there should be one public hearing or two, only practical, as opposed to legal, considerations are involved. Thus the scholarly research and legal analysis which the Commission can contribute to the solution of a problem do not come into play. In such matters the Commission's judgment is of no greater significance than the judgment of any lay group acquainted with the problem. In short, the questions of policy are more of a political or social nature than of a "legal" nature. The Commission has decided, therefore, not to make any recommendation on the subject of this study, although it remains convinced that revision of the statutes in this field would be highly desirable.

The Commission believes that this decision provides an appropriate occasion for a brief statement of its views on its proper sphere of activity. The Commission recognizes that all substantive revisions of the law involve the determination of policy questions. Some of these questions are clearly best solved with the aid of the legal research and analysis which the Commission undertakes to provide through its procedures. Thus, whether and to what extent sovereign immunity from suit should be waived by the State is the type of subject on which the Commission's recommendations can be expected to be of particular significance to the Legislature. On the other hand, some questions clearly are not aided of solution by extensive legal research and analysis. Thus, whether an injured workman should be paid compensation at the rate of $40 or $60 per week is the type of subject on which the Commission's recommendations would be of little or no aid to the Legislature.

It is, of course, difficult in many cases to determine in advance of a study of a given subject what policy questions will arise and to what extent their solution is materially aided by legal research and analysis. Nevertheless, in selecting topics to recommend to the Legislature for assignment to the Commission, the Commission proposes to avoid topics such as the planning study which involve policy questions whose solution is not aided by legal research. The Commission likewise recommends to the Legislature that before referring any topic to the Commission for study, careful consideration be given to the question whether its studies and recommendations on the topic will be of particular and significant aid to the Legislature.

[68] See, *e.g.*, 1955-57 Report of the Subcommittee on Planning and Zoning of the Assembly Interim Committee on Conservation, Planning, and Public Works, 13 Assembly Interim Committee Reports No. 15, 2 APPENDIX TO JOURNAL OF THE ASSEMBLY (1957); 1953-55 Report of the Subcommittee on County and Community Planning of the Assembly Interim Committee on Conservation, Planning and Public Works, 13 Assembly Interim Committee Reports No. 1 (April 1955); Final Report of the Assembly Interim Committee on Conservation, Planning and Public Works 43-52 (April 1953).

XII. APPOINTMENT OF ADMINISTRATOR IN QUIET TITLE ACTION

Resolution Chapter 207 of the Statutes of 1955 authorized the Commission, *inter alia,* to make a study to determine whether a statute should be enacted which would make it unnecessary to appoint an administrator in a quiet title action involving property to which some claim was made by a person since deceased.

In a preliminary report on this study, the Commission's research consultant, Professor Richard C. Maxwell of the School of Law, University of California at Los Angeles, raised a serious question as to the wisdom of going forward with the study. The Commission thereupon directed inquiries on the matter to title company representatives, the State Bar, and others. The consensus of opinion was that there is no need for a change in the law and that an attempt to dispense with the appointment of an administrator in a quiet title action would raise constitutional questions of a serious nature. Accordingly, the Commission determined not to carry this study further.

XIII. RECOMMENDATION

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed in Part IV A of this report.

Respectfully submitted,

THOMAS E. STANTON, JR., *Chairman*
JOHN D. BABBAGE, *Vice Chairman*
JAMES A. COBEY, *Member of the Senate*
CLARK L. BRADLEY, *Member of the Assembly*
ROY A. GUSTAFSON
BERT W. LEVIT
CHARLES H. MATTHEWS
STANFORD C. SHAW
SAMUEL D. THURMAN
RALPH N. KLEPS, *Legislative Counsel, ex officio*

JOHN R. MCDONOUGH, JR.
Executive Secretary

o

printed in CALIFORNIA STATE PRINTING OFFICE
87003 11-58 2M