

AGENDA FOR MEETING OF MARCH 18 AND 19, 1955

Room 3191 - State Capitol

1. Approval of minutes of meeting of December 17 and 18, 1954.
2. Financial Report
 - (a) Report on status of budget for fiscal year 1955-56.
 - (b) Report on position re budget for fiscal year 1954-55.
 - (c) Report on Education Code contract with Stanford.
 - (d) Report on agenda contract with Stanford.
3. Report on appointment of Mrs. Nordby as Assistant Executive Secretary.
4. Resolution authorizing Chairman to enter into contracts with research consultants.
5. Resolution authorizing Chairman to enter into contract with Stanford for telephone service.
6. Education Code.
 - (a) Action upon committee report recommending amendment of Education Code bills (A.B. 1605 and 1606; S.B. 443 and 502).
 - (b) Decision re procedure to be followed re Education Code bills.
 - (c) Decision re procedure to be followed re A.B. 1472 and A.B. 1473 (appropriation for continuation of Education Code project and deficiency appropriation).
 - (d) Action upon committee report re noncommission bills which conflict with commission's bills.
 - (e) Discussion of memorandum re continuation of the Education Code project.
7. Probate Code.
 - (a) Report on meeting of Probate Code Committee with subcommittee C. A. J.
 - (b) Action upon memoranda of Executive Secretary re amendment of A.B. 858 and S.B. 503.
 - (c) Decision re procedure to be followed re commission's bills.

8. Concurrent resolutions re commission agenda.

- (a) Decision re procedure to be followed re Senate Concurrent Resolution 22 (Calendar of Topics).
- (b) Discussion of memorandum re Senate Concurrent Resolution 15 and Assembly Concurrent Resolution 25 pertaining to the provisions of the Labor Code re employment of women.
- (c) Discussion of memorandum re Assembly Concurrent Resolution 33 pertaining to the revision of the Inheritance and Gift Tax laws.
- (d) Discussion Assembly Concurrent Resolution No. 63 re revision of Fish and Game Code.
- (e) Discussion of the possibility of a joint rule that all concurrent resolutions assigning studies to the Law Revision Commission be referred to the commission for consideration and report before any action is taken on them.

9. Decision re procedure to be followed re A.B. 2785.

10. Determination of the policy of the commission as to the distribution of mimeographed material to libraries pursuant to the Library Distribution Act.

11. Agenda

- (a) Action upon communications received from State Bar.
- (b) Shall suggestions be sent to Legislative Committees?
- (c) Action upon suggestions 55 and 57, returned by the Judicial Council.
- (d) Action upon suggestion made by Mr. Levit re Kirkwood v. Bank of America.
- (e) Discussion of memorandum of Executive Secretary re committee procedure.

Materials which will be needed for Meeting ofMarch 18 - 19, 1955Education Code MaterialsThe Education CodeBills

Commission's Education Code Bills:

- (1) Senate Preprint Bills 28 and 30.
- (2) A.B. 1605, 1606, and S.B. 443, 502 - Package "B",
mailed Feb. 15.

Noncommission bills affecting commission's Education Code bills:

- (3) Package "E", mailed Feb. 15
- (4) Bills mailed Feb. 21:

A.B. 174	S.B. 1813
989	
3062	
3064	
3454	

Mr. Geddes' bills to continue work on the Education Code project:

- (5) Package "C", mailed Feb. 15.
- (6) Mimeographed Analysis and Explanation of Senate Preprint Bills 28 and 30.

Memoranda

- (7) General memorandum re problems presented by bills which affect revisions proposed by the Law Revision Commission, mailed Feb. 9 (white).
- (8) Report of Education Code Committee re noncommission bills and staff memoranda relating to same, mailed Mar. 11 (green).
- (9) Report of Education Code Committee re amendment of commission's Education Code bills and staff memoranda relating to same, mailed March 7 (green).
- (10) Mr. Brunn's memorandum re continuation of Education Code project, mailed Mar. 2.

Probate Code Materials

Bills

Commission's Probate Code bills:

(11) A.B. 858, S.B. 503 - Package "A", mailed Feb. 15.

Noncommission bills affection §§ 640 to 646 of the Probate Code:

(12) A.B. 3431, mailed Feb. 21.

(13) A.B. 12, mailed Mar. 11.

Memoranda

(14) Memorandum of Executive Secretary re proposed amendment of
commission's revision of Probate Code § 640, mailed Feb. 17.

(15) Memorandum of Executive Secretary re further amendments,
mailed herewith.

Agenda Materials

Concurrent Resolutions

(16) Senate 15, 22 and Assembly 25, 33 - Package "D", mailed Feb. 15.

Memoranda

(17) Executive Secretary's memorandum re concurrent resolutions
re revision of the Labor Code provisions relating to the
employment of women, mailed Feb. 10.

(18) Executive Secretary's memorandum re revision of the
inheritance and gift tax laws, mailed Feb. 10.

(19) Executive Secretary's memorandum re future procedure for
processing suggestions and reports, mailed herewith.

(20) Drafts of letters to legislative committees re suggestions
not accepted by commission, mailed herewith.

(21) Copies of suggestions 55 and 57 and copy of letter of
Mr. Norris J. Burke, mailed herewith.

- (22) Suggestion 71 from the State Bar relating to the right of nonresident aliens to inherit, and report thereon, mailed herewith.
- (23) Letter of Mr. Jack A. Hayes relating to juvenile court study, mailed herewith.
- (24) Suggestion 93 by Mr. Levit, relating to Kirkwood v. Bank of America, mailed herewith.

Miscellaneous Materials

- (25) Report of the California Law Revision Commission.
- (26) Minutes of the meeting of December 17 and 18.

April 18, 1955

Minutes of Meeting
of
March 18 and 19, 1955

Pursuant to the call of the Chairman, the Law Revision Commission met on March 18 and 19 at Sacramento, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman

Mr. John D. Babbage, Vice Chairman

Honorable Jess R. Dorsey, Senate

Honorable Clark L. Bradley, Assembly

Mr. Richard C. Fildew

Mr. Bert W. Levit

Mr. Stanford C. Shaw

Mr. John H. Swan

Mr. Halph N. Kleps, ex officio

ABSENT:

Mr. Samuel D. Thurman

Mr. John R. McDonough, Jr., Executive Secretary of the commission, and Mrs. Virginia B. Nordby, Assistant Executive Secretary of the commission, were present on both days. Mr.

George Brunn, Legislative Consultant in charge of the commission's Education Code revision project, was present during part of the meeting on March 18.

The minutes of the meeting of the commission on December 17 and 18, 1954, which had been distributed to the members of the commission prior to the meeting, were unanimously approved.

Administrative Matters

The Chairman reported that Mr. Clark Bradley, Member of the Assembly, had been chosen as legislative member to succeed Mr. Stanford C. Shaw. He also reported that the Governor had reappointed Mr. Stanford C. Shaw as a member of the commission, thus bringing the commission to its full complement.

The Executive Secretary reported that the budget of the commission for the 1955-56 fiscal year had been approved by sub-committees of both the Assembly Ways and Means Committee and the Senate Finance Committee without modification. He stated that the Legislative Auditor had stated before both committees that his final approval of the budget would be conditioned upon the Legislature's approval of the commission's calendar of topics selected for study or upon the commission's having other work assigned to it which would justify the budget. Subject only to that qualification, it appears that the budget will be approved without further question.

The Executive Secretary reported that on the commission's request the Department of Finance had made several adjustments among the various accounts in the 1954-55 budget. It is anticipated that the funds remaining in each account will be sufficient to meet necessary expenditures for the current fiscal year, with the possible exception of the per diem account. In that account there is money for only one or two more commission meetings.

The Executive Secretary reported that expenditures to March 15, 1955, under the present Education Code contract with Stanford University totalled \$2273, leaving a balance as of that date of \$727. He also reported that expenditures to March 15, 1955, under the Agenda contract with Stanford University totalled \$233, leaving a balance of \$943.

The Chairman inquired whether the Education Code contract with Stanford University, which expires on March 31, should be extended. It was agreed by the commission that no extension is necessary.

The commission discussed whether the Chairman should be authorized at the present time to enter into contracts with research consultants to make studies approved by the Legislature at the current session. Because no funds could be expended for such studies until the beginning of the 1955-56 fiscal year on July 1, the commission decided that the Chairman should not now be authorized to enter into contracts with research consultants.

The Executive Secretary reported that State practice requires that when telephone service costing \$20.00 or more per month is furnished to a State agency there be a written contract covering such service. After this report was fully discussed Mr. Levit made a motion which was seconded by Mr. Fildew and unanimously passed that the Chairman of the Commission be authorized to enter into a contract with Stanford University for the furnishing of telephone and telephone switchboard services to the office of the Executive Secretary of the Commission.

The Executive Secretary reported that on February 1 Mrs. Virginia B. Nordby was appointed Assistant Executive Secretary at the Junior Counsel level, and that she was already doing a large share of the work of his office in a wholly satisfactory manner.

The commission discussed at length the provisions of the Library Distribution Act (Government Code Sections 13660 and 13668) which requires all State agencies and commissions to distribute copies of printed and mimeographed material to the State Archivist, the Documents and Publications Section of the Printing Division of the Department of Finance, and all Complete Depository Libraries. It was pointed out that there is some question as to which of the mimeographed materials prepared by the Executive Secretary's office could be considered "inter-office memoranda" or "confidential" in nature and thus exempt from the distribution requirement. The commission decided that the manner of compliance with the Act should

be left to the discretion of the Executive Secretary with the general directive that he follow the customary procedure.

A.B. 2785

The commission discussed at length what action, if any, it should take on A.B. 2785. This bill, sponsored by Mr. Weinberger, would, if enacted, amend Government Code Sections 10300 to 10351 to limit the function of the Law Revision Commission to recommending nonsubstantive changes in the law. It was noted that the Legislative Counsel is presently required to recommend necessary nonsubstantive changes in the law and that A.B. 2785 would, therefore, leave little for the commission to do. The commission decided that the Chairman, the Legislative members, and the Executive Secretary should arrange a meeting as soon as possible with Mr. Weinberger and other members of the Legislature who have expressed concern about the functions of or need for the Law Revision Commission, to explain the work which the commission has done and proposes to do in the future in the nature of recommending substantive revision of the law.

Education Code

The Executive Secretary reported that (1) preprint copies of the commission's Education Code bills and copies of the mimeo-

graphed analyses of the bills prepared by the staff had been distributed to the Department of Education, the Attorney General, all County Councils, District Attorneys and county superintendents of schools and the members of the CASA Education Code Committee and (2) copies of the preprinted bills alone had been sent to all school districts having an average daily attendance of 900 or more, all of the commission's forty special consultants on revision of the Education Code, and all educational organizations in the State. He explained that the bills were accompanied by a letter requesting suggestions, comments or criticisms of the commission's proposed revisions, and that 44 suggestions had been received. A staff report and recommendation relating to each suggestion was prepared and distributed to members of the commission and members of the CASA Education Code Committee. The Executive Secretary reported that the staff met with the CASA Education Code Committee in February for the purpose of obtaining the views of that Committee regarding the suggestions which had been received and any additional suggestions which that Committee might have. The suggestions and the recommendations of the CASA Committee were then considered by the commission's Education Code Committee, Samuel D. Thurman, Chairman, Thomas E. Stanton, John H. Swan and Clark L. Bradley. He reported that the committee had considered the suggestions and had prepared a committee report recommending certain amendments of

the Education Code bills which had been sent to the members of the commission prior to this meeting.

The commission then considered the Education Code Committee's report. It decided that the bills should be amended as recommended by the committee, with the following modifications:

1. Education Code Section 1851. It was decided that the amendment recommended by the committee should be rephrased to assure that no electioneering would be carried on within the building in which the polls are located or within 100 feet from any entrance to the building.

2. Education Code Section 11291. Since the Department of Education had withdrawn the suggestion on which this recommendation was based, the commission decided that its proposed revision of this section should not be changed.

3. Education Code Section 13861. It was decided that this section should be amended to make it clear that a teacher may have payroll deductions made both for a hospital service contract and for group disability insurance and group life insurance.

4. Education Code Section 20351. The commission decided to withdraw its proposed revision of this section from the bill because the survey and hearing presently required by the section but eliminated by the commission's proposed revision serves the function of notifying local citizens and giving them the opportunity to protest the establishment of a cooperative store on the college campus.

The commission decided not to change the provision in S.B. 443 and A.B. 1605 for a mandatory sample ballot in recall elections.

The commission discussed the procedure to be followed in amending the Education Code bills and moving them through the Legislature. It was decided that both the Senate bills (S.B. 443 and 502) and the Assembly bills (A.B. 1605 and 1606) should be amended as soon as possible. It was also decided that the Senate bills only should be moved. The Chairman and the Executive Secretary were directed to testify concerning the bills if invited to do so by any legislative committee.

The commission discussed A.B. 1473 which would, if enacted, appropriate \$8000 to augment the \$12,000 originally appropriated for the revision of the Education Code. It was decided that this appropriation is no longer needed since the Education Code staff has now been disbanded. The commission requested the Chairman to notify Mr. Geddes, the sponsor of A.B. 1473, of its view on this matter.

The commission discussed A.B. 1472 which would, if enacted, appropriate \$65,000 to continue the revision of the Education Code. The commission requested Mr. Bradley to tell the sponsor, Mr. Geddes, that the commission would appreciate his waiting until the commission's Education Code bills have been considered by the Legislature before having A.B. 1472 set for hearing. The commission

also decided that the Chairman and the Executive Secretary, if invited to testify on A. B. 1472, should present the problems involved in the commission's revising the Education Code.

The commission discussed at length the procedure to be followed with respect to noncommission bills affecting sections of the Education Code affected by the commission's bills. It was decided that this matter should be left to the discretion of the Legislative Members of the commission, the Chairman, and the Executive Secretary with full authority to agree to such amendments of the commission's bills as they might deem advisable in the various circumstances which might be presented.

The Executive Secretary informed the commission that Mr. George Brunn will be leaving the staff on March 31 because the Education Code contract with Stanford University expires at that time. A motion was made, seconded, and unanimously passed that the commission extends its gratitude and commendation to Mr. Brunn for the work he has done for the commission and the great contribution which he has made to the revision of the Education Code.

Probate Code

The Executive Secretary reported to the commission on a meeting with the Northern Section of the State Bar Committee on

Administration of Justice to discuss A.B. 858, the commission's Probate Code bill, A.B. 12, a bill sponsored by the State Bar which would also revise Sections 640-646 of the Probate Code, and the Executive Secretary's memorandum of February 17, 1955 recommending certain amendments of A.B. 858. Commissioners Levit, Stanton and Thurman, Mr. Basye and the Executive Secretary were the representatives of the commission at this meeting. Several suggestions for the amendment of A.B. 858 made at this meeting were reported to the commission in the Executive Secretary's memorandum of March 14, 1955 as supplemented by a letter of March 16, 1955.

The Executive Secretary reported that he had been informed by Mr. Elmore of the State Bar that the Northern Section had recommended to the Committee on Administration of Justice that the State Bar give its approval and support to A.B. 858 rather than to A.B. 12. The Executive Secretary also reported that the Southern Section of the Committee on Administration of Justice had held a meeting to discuss A.B. 858 and A.B. 12. There were no representatives of the commission present at this meeting. The Southern Section made several suggestions, in addition to those made by the Northern Section, for amendment of the commission's bills.

All of these suggestions for amendment of A.B. 858 were considered by the commission. It was decided that the commission's Probate Code bill would be amended to effectuate all of the suggestions which had been made, with the exception of the following:

1. The suggestion that only liens and incumbrances "of record" be excluded from the decedent's estate, made by the Southern Section of the CAJ, was not accepted. It was felt that because this question had been carefully considered before the commission decided to remove the "of record" requirement, and because the State Bar had not presented any arguments not considered at that time, that the commission's earlier decision should stand.

2. The suggestion that a probate homestead be included in the decedent's estate for purposes of determining the right to summary distribution, also made by the Southern Section, was not accepted. It was felt that the inclusion of a probate homestead in the "other estate" of the surviving spouse eliminates the problem which it had been suggested might be caused by its exclusion from the decedent's estate.

The Executive Secretary reported that Mr. Baye had recently suggested that Section 645 might be amended to clarify a possible ambiguity as to whether the minor children may take the estate if the surviving spouse has remarried. The commission decided against such an amendment because the matter would require more study than could be undertaken at this late date.

The commission discussed the procedure to be followed in amending A.B. 858 and moving it through the Legislature. It was decided that the bill should be amended in both the Senate and the Assembly as soon as possible and set for hearing by the Assembly

Judiciary Committee at its meeting on Monday, March 28.

Concurrent Resolutions Affecting Agenda

The commission discussed the procedure to be followed with regard to Senate Concurrent Resolution 22, which would authorize the study of subjects listed in the commission's report as Topics Selected for Immediate Study. It was decided that the resolution should, if possible, be set for hearing by the Senate Judiciary Committee on Wednesday, March 30.

The Executive Secretary reported that a bill has been introduced to eliminate the problem presented by Probate Code Sections 40 to 43 relating to testamentary gifts to charity. The commission has requested the Legislature to approve an immediate study of this topic. (Report to the Legislature, Topic No. 3). The matter was discussed and the commission decided that Topic No. 3 should not be withdrawn from S.C.R. 22 even if S.B. 319 passes and is signed by the Governor. It was felt that a study would still be necessary to determine whether S.B. 319 is a complete solution to the problem.

The Legislative Counsel reported that the Senate Labor Committee had held a hearing on Senate Concurrent Resolution 15. This Resolution would, if adopted, direct the Law Revision Commission to study the provisions of the Labor Code relating to the employment of women. There had been objection at the Senate Labor Committee hearing to the commission's undertaking a study of this nature, and the Committee had ultimately referred the matter to the Senate Rules

Committee for possible assignment to a Legislative interim committee for study. The commission decided to take no action with regard to either S.C.R. 15 or its companion, A.C.R. 25. It was agreed, however, that this was a type of study which is not particularly appropriate for the commission to undertake, and that the commission's representatives should so indicate if later asked about the commission's view on the matter.

The commission discussed Assembly Concurrent Resolution 23 which would, if adopted, direct the commission to study and analyze the provisions of the California inheritance and gift tax laws and the federal estate and gift tax laws, and to determine what might be done to bring the California laws into closer accord with the federal laws. The memorandum of the Executive Secretary concerning A.C.R. 23 was considered. The Executive Secretary stated that he believed that the sponsor should be requested to make the resolution more definite as to the scope of the study to be made. It was decided, however, that this should not be done since it might later prove desirable to have the nature and scope of the study flexible. It was also agreed that, for the commission's information, Mr. Bradley would try to determine whether the author, Mr. McFall, seriously intends to seek adoption of the Resolution.

The commission discussed Assembly Concurrent Resolution 63 which would, if adopted, direct the commission to eliminate the obsolete, superseded, ambiguous, anachronistic, and other defective provisions of the Fish and Game Code. It would also direct the

commission to "study the problem of how best to inform the public of the provisions of the Fish and Game Code and regulations of the Fish and Game Commission...." It was decided that this was a matter more suitable for study by a Legislative interim committee which could hold hearings and make major policy decisions in the area of fish and game conservation and regulation. Mr. Bradley was requested to notify the author, Mrs. Davis, of the commission's view.

The Executive Secretary reported that it had been suggested to him that the commission seek the adoption by the Legislature of a joint rule that all concurrent resolutions assigning studies to the Law Revision Commission be referred to the commission for consideration and report before any action be taken on them. The commission discussed this suggestion and decided that, although the Legislative Counsel might in the future informally suggest to any Member of the Legislature who might ask his office to draft a concurrent resolution directing the commission to make a study that the Member might wish to consult with the Chairman of the commission, the commission should not seek the joint rule suggested.

Agenda

The commission considered two suggestions received from the State Bar respecting topics to be included on its Agenda:

1. Suggestion No. 71: A study to determine whether Probate Code Sections 259, 259.1, and 259.2, pertaining to the right of nonresident aliens to inherit, should be revised.

The commission placed this suggestion on its list of topics recommended for immediate study to be reported to the Legislature for approval at the 1956 session. The Chairman was directed to report this action to the State Bar with the suggestion that if earlier action on the matter is desired a concurrent resolution directing the commission to study the matter immediately might be introduced.

2. State Bar Conference Resolution 23: A study to determine whether the Juvenile Court Law and the other laws relating to children should be revised. The commission consolidated this study with Topic No. 11 on its 1955 calendar of topics selected for study.

The commission also reconsidered Suggestions No. 55 and 57 which had been referred by the commission to the Judicial Council and which the Judicial Council had indicated it had no present plans to study. The commission decided to put Suggestion No. 55 on its list of topics recommended for immediate study to be reported to the Legislature for approval in 1956. It decided to put Suggestion No. 57 in the Not Accepted category.

Action on Suggestion No. 93, regarding the inheritance tax on inter vivos transfers of community property to a spouse, was postponed until the Legislature acts on A.B. 119 which would, if enacted, eliminate the problem.

The commission discussed whether it should forward to Legislative standing or interim committees suggestions received from members of the Bench and Bar which the commission finds inappropriate for study for one reason or another. It was decided that the commission's representatives - the Chairman, the Legislative members and the Executive Secretary - should ask the Chairmen of several standing committees whether they would be interested in having such suggestions sent to them. If they display an interest, the suggestions should be forwarded to them, but the names of the originators of the suggestions should be withheld.

The Executive Secretary reported that the number of suggestions being received from members of the Bench and Bar for topics of study has decreased considerably, and that the Agenda contract with Stanford University will expire on June 30. After a brief discussion, the commission postponed the question of what might be done to encourage members of the Bench and Bar to continue sending suggestions. It decided, however, that the present Agenda contract with Stanford University should be extended, or a similar new contract made, to cover the period to June 30, 1956. A motion was made, seconded and unanimously passed that the Chairman be authorized to enter into such a contract with Stanford University at a cost not to exceed \$1500.

The Chairman reported that, pursuant to the decision of the commission at its meeting of September 23 and 24, he had appointed an Agenda Committee to give initial consideration to matters to be included on the commission's Calendar. The members appointed to that

committee are Mr. Stanford E. Shaw, Chairman, Mr. John D. Babbage and Mr. Richard C. Fildew.

The commission discussed the procedure to be followed in the future by the Agenda Committee. It was decided that copies of all suggestions originated by the staff or received from members of the Bench and Bar and copies of all staff reports on them should continue to be sent to all members of the commission. The Agenda Committee should, however: (a) initiate any further correspondence which it deems necessary with the originator or with other persons or groups who might have relevant information; (b) assign suggestions for staff study and report; (c) consolidate suggestions on the same subject; (d) in appropriate cases, refer suggestions to the Judicial Council, the State Bar, or to Legislative committees which might be interested in them.

John R. McDonough, Jr.
Executive Secretary