

Date of Meeting: May 16-17, 1958

Date of Memo: May 13, 1958

Memorandum No. 10

Subject: Study No. 56(L) - Narcotics Study

The question for consideration at the May meeting is whether the Commission is now prepared to formulate its report and recommendations to the Legislature on this subject.

The history of this study is the following:

1. The study originated in Resolution Chapter 222 of the Statutes of 1957 introduced by Assemblyman George G. Crawford of San Diego, which provides:

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the California Law Revision Commission be and is hereby requested 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, and to submit a report to the Legislature not later than the tenth legislative day of the 1959 General Session of the Legislature, including in the report its recommendations for appropriate legislation.

2. After the 1957 Session the Chairman of the Assembly Interim Judiciary Committee appointed a Subcommittee on Police Administration and Narcotics whose Chairman is Assemblyman Crawford. At the Commission's direction Mr. Stanton thereupon wrote Mr. Crawford as follows:

The Law Revision Commission has been giving consideration to how best to carry out the assignment given it by your Assembly

Concurrent Resolution No. 75, relating to revision of our narcotics laws.

One question involved in this assignment is whether it would be advisable to have a separate code for all laws relating to narcotics. To provide necessary information on this question the Commission is entering into a contract with the Legislative Counsel to have him find and list all laws relating to narcotics, suggest wherein these laws are susceptible of improvement through nonsubstantive revision, and submit his recommendations on the advisability of a separate code for narcotics laws.

The other question involved in this assignment is whether substantive revision of our narcotics laws from a health and law enforcement standpoint is necessary. We are informed that a Subcommittee of the Assembly Judiciary Committee has been appointed under your Chairmanship to study substantive revision of the narcotics laws. In view of this development it seems quite possible that there would be a duplication of effort if the Law Revision Commission were also to concern itself with substantive revision of our narcotics laws during the present interim period. Therefore, if it meets with your approval as the author of A.C.R. No. 75, the Commission will limit its study thereunder to the question of the advisability of a separate code for narcotics laws. If this does not meet with your approval, please let us know.

We will keep you informed about our work pursuant to A.C.R. No. 75 and will welcome any comments which you may have.

To this letter, Mr. Crawford replied as follows:

I concur completely with your opinion concerning the "division of labor" between the Commission and the Assembly Interim Committee, of which I am the chairman. I have no wish to have either body duplicate the work of the other.

I would appreciate it greatly if you would keep me informed of the Commission's work on A.C.R. 75, and if it would be helpful to you, will advise you of the Committee's progress. If you think it advisable, I would be glad to have a member of the Law Revision Commission, or a staff member, sit in on our hearings.

3. At about the same time the Law Revision Commission entered into a contract with the Legislative Counsel whereby the latter undertook to compile for the Commission "all of the law relating to narcotics, as contemplated by Stats. 1957, Res. Ch. 222." This work was done and a compilation of narcotics

law was delivered by the Legislative Counsel to the Commission at its meeting in December, 1957. The compilation is described in an intraoffice memorandum of the Legislative Counsel's office which serves as a preface to the compilation, as follows:

Attached is a compilation of laws relating to narcotics. The General Index to West's Annotated California Codes and Larmac Consolidated Index to Constitution and Laws of California, 1957, were used in gathering this material. The codes are arranged alphabetically and the sections are listed numerically within each code.

In compiling these laws a broad approach to the subject was used. Included are not only those sections which specifically relate to narcotics, but also those sections relating to drugs, dangerous drugs, narcotic drugs, habit-forming drugs, hypnotic drugs, and poisons where these terms either have been defined to include narcotics or where they are susceptible to such interpretation.

Specifically this compilation includes:

1. Chapter 9, commencing at Section 4000, Division 2, Business and Professions Code, re pharmacy, except for Article 9, commencing at Section 4300, relating to prophylactics.
2. Division 10, commencing at Section 11000, Health and Safety Code, relating to narcotics, except Section 26200.5 which relates to vitamins.
3. Chapter 2, commencing at Section 26200, Division 21, Health and Safety Code, relating to drugs.
4. Chapter 8, commencing at Section 6100, Title 7, Part 3, Penal Code, relating to Medical Facility.
5. Article 1, commencing at Section 5350, Chapter 3, Part 1, Division 6, Welfare and Institutions Code, relating to narcotic drug addicts.
6. Article 2, commencing at Section 5400, Chapter 3, Part 1, Division 6, Welfare and Institutions Code, relating to habit-forming drug addicts.
7. Miscellaneous sections from various codes.

Not included are the following:

1. Article 3, commencing at Section 1061, Chapter 7, Division 5, Agricultural Code, relating to economic poisons. Section 1062 of this article provides that it does not apply to any preparations, drugs or medicines intended to be used or sold solely for medical use by humans.

2. Chapter 7b, commencing at Section 1095, Division 5, Agricultural Code, relating to livestock remedies. Section 1095.8 of this chapter provides that it does not apply to any drug required by federal law to be sold on prescription only (see 21 U.S.C. 352(b) and 353(b)(1)).

4. The study was discussed at the January 1958 meeting of the Commission. At the end of this discussion Mr. Kleps was requested to submit to the Commission his recommendation as to whether a separate code of narcotics laws would be justified. Mr. Kleps subsequently wrote to Mr. Stanton, under date of January 30, 1958, 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 in-

sufficient, 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.

5. At the January meeting the Commission directed the staff to submit a memorandum relating to what, if anything, further should be done on this study. The staff recommends that this study be concluded by writing a report summarizing the events chronicled above and stating:

- 1) That pursuant to its understanding with Assemblyman Crawford the Commission has made no study relating to possible substantive revision of the narcotics laws and makes no recommendations relating thereto.
- 2) That the Commission recommends that a separate code of narcotics laws not be enacted for the reasons stated by the Legislative Counsel in his letter of January 30, 1958.

It is, of course, possible that if the Commission were to make an intensive study of the laws compiled by the Legislative Counsel it would be able to uncover provisions therein which are conflicting, ambiguous and otherwise technically defective. If such provisions were found the Commission could report this fact to the Legislature together with such recommendations as would bring about a desirable (though nonsubstantive) revision of the narcotics laws. The staff recommends against such an undertaking for two reasons:

(1) it is not specifically called for by Res. Ch. 222; (2) as experience has shown, it is not possible to avoid questions of substance in undertaking revision of so large a body of law.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:imh