

#50

5/25/66

First Supplement to Memorandum 66-24

Subject: Study 50-- Leases

Attached to this memorandum as Exhibit I (pink) is a letter from George Herrington in response to a letter, attached as Exhibit II (yellow), which we sent to him.

In our letter we asked Mr. Herrington to indicate whether proposed Section 3387.5 of the Civil Code would meet the problems outlined in his first letter. His reply states that the proposed section is satisfactory. He would, however, like to have some of the language in the comment revised. We have no objection to the suggested revisions and we recommend that they be made.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

First Supp.
Memo 66-24

EXHIBIT I

ORRICK, DAHLQUIST, HERRINGTON & SUTCLIFFE
COUNSELORS AND ATTORNEYS AT LAW
405 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104

W. H. ORRICK
CHRISTOPHER M. JENKS
OF COUNSEL
TELEPHONE 392-1120
AREA CODE 415
CABLE "ORRICK"

T. W. DAHLQUIST
GEORGE HERRINGTON
ERIC SUTCLIFFE
NATHAN D. ROWLEY
WILLIAM H. ORRICK, JR.
ORVILLE A. BOHLY
WALTER S. OLSON
WILLIAM S. HOREE
EDWARD E. MITCHELL
BONNEY E. ROBERTS
JAMES H. BENNEY
C. RICHARD WALKER
JAMES F. CRAFTS, JR.
ANDREW DOWNEY ORRICK
JAMES K. HAYNES
RICHARD C. SALLADIN
RICHARD J. LUCAS

May 24, 1966

Mr. Joseph B. Harvey
Assistant Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Dear Mr. Harvey:

I have reviewed the papers enclosed with your letter of May 17, but in a rather hurried manner. I think that Section 3387.5 to be added to the Civil Code will probably be satisfactory for our purposes. However, I would like to change some of the language in the comments.

A) The second sentence may be a little misleading as I do not believe any cases have actually arisen under which any of the existing leases have been specifically enforced. The assumption is that such actions may be brought to compel the payment of rental from year to year and enforceable only out of the income and revenue of the particular year in question. I suggest that this sentence be changed to read:

"Leases have been utilized by public entities to finance the construction of public improvements upon the theory that the lessee's obligation thereunder may be enforced from year to year."

B) The last sentence of the next to the last paragraph I think should be changed to read as follows:

"Under Section 3387.5 it will be clear that a lessee may not avoid his obligations under the lease by abandoning the leased property."

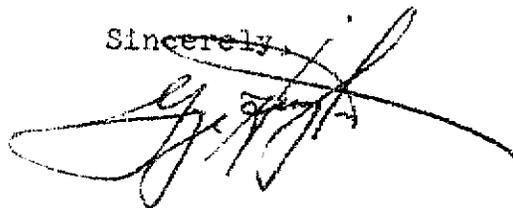
ORRICK, DAHLQUIST, HERRINGTON & SUTCLIFFE

-2-

Needless to say, I have considered the proposed draft from a very, very limited standpoint. I have given no consideration to the numerous problems which arise in connection with oil leases, mining leases, shopping center leases, long-term financing leases such as the 99-year lease of the Russ Building, or similar types of leaseback arrangements under which numerous buildings and properties have been constructed. I assume that the Committee in its deliberations will take full cognizance of the multitude of different types of leases which have been utilized in this State for financing and other purposes.

I remain

Sincerely,

A handwritten signature in black ink, appearing to be "G. J. Herrington", written over the word "Sincerely,".

GH/le

First Supp.
Memo 66-24

EXHIBIT II

May 17, 1966

Mr. George Harrington
405 Montgomery Street
San Francisco, California 94104

Dear Mr. Harrington:

The Commission's staff has reviewed your letter of December 30, 1965, as well as the letters of several other interested lawyers relating to the Commission's tentative recommendation relating to leases. In the light of all of these communications, a revised tentative recommendation has been prepared. We are enclosing a copy of the revised recommendation.

This revised recommendation will be considered by the Commission at its meeting on May 28, 1966, and again at its meeting on June 9-11, 1966. To assist them in their consideration of the revised recommendation, we would like to obtain your views as to whether the revisions meet the problem raised in your former letter. In order that we may reproduce your reply and distribute it to all of the Commissioners (your first letter has already been distributed to all of the Commissioners), we would like to receive it by June 1, 1966.

Please note proposed Civil Code Section 3987.5 and the comment to that section. If the past practice of the private legal publishers is followed again, the comment will appear in the annotated editions of the Civil Code immediately under the section. We would like to know if the proposed section and its comment meet the problem that public entities might have under the general provisions of the statute, and if not, we would like to know what revision might be necessary to meet the problem.

Very truly yours,

Joseph B. Harvey
Assistant Executive Secretary

JHB:lb
enc